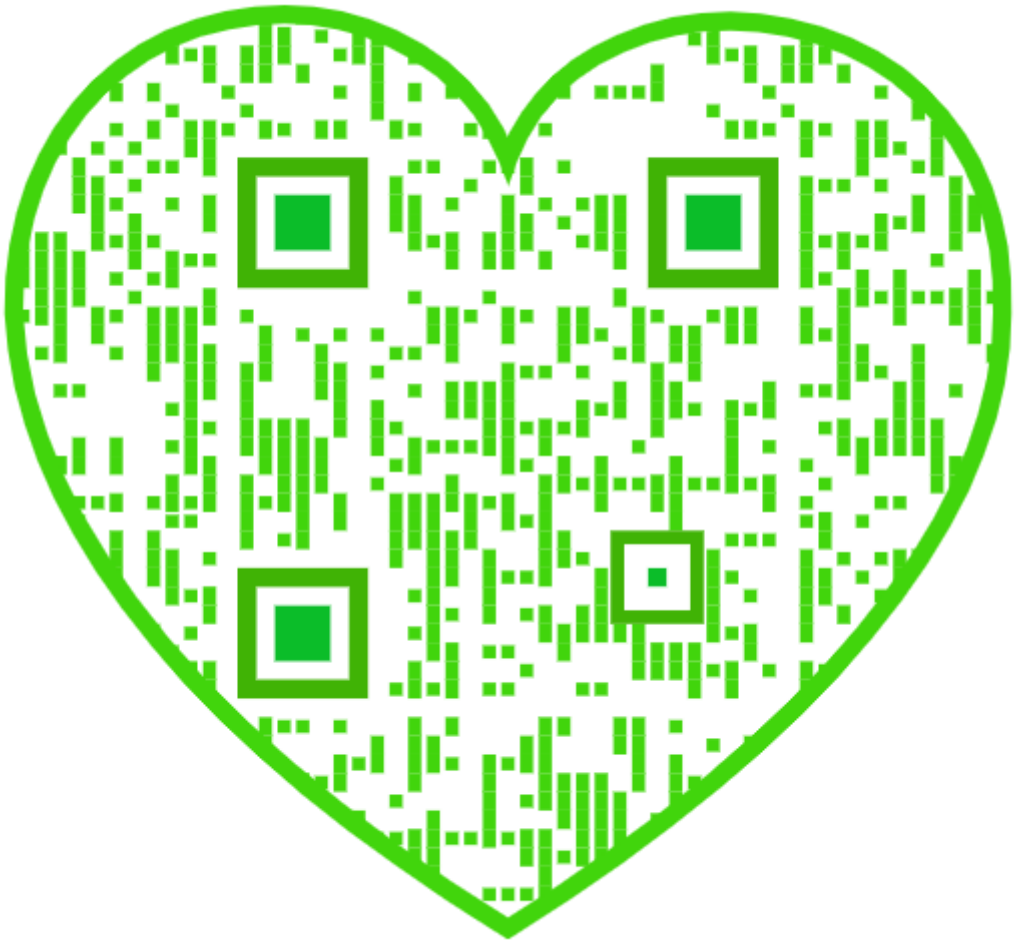

THEORY AND PRACTICE

OF

BANKING

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OF

BANKING

BY

HENRY DUNNING MACLEOD, M.A.

OF TRINITY COLLEGE, CAMBRIDGE, AND THE INNER TEMPLE, BARRISTER-AT-LAW;

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when Parliament met, the country was in a very alarming condition. Parliament pursued the usual course, recommended the most stringent economy in the consumption of provisions, and offered to guarantee 100*s.* a quarter to all who imported wheat. In spite of all these measures, wheat rose in March, 1801, to 156*s.*, barley to 90*s.*, and oats to 47*s.* In the autumn of 1799, failures of great magnitude took place in Hamburg : 82 houses came down with liabilities amounting to £2,500,000. In consequence of these, discount rose to 15 per cent. Under the influence of the enormous sums of money that had to be sent abroad in purchase of grain, the attraction of this high rate of discount, and other causes, the exchange on Hamburg, which had stood so high for some years, fell in January, 1801, to 29·8, being upwards of 14 per cent. against England

2. We have already seen that, in the great monetary crisis of 1696-97, it was universally acknowledged by Parliament and the most eminent merchants, that it was the bad state of the coinage which produced the great rise in the market price of bullion, and the heavy fall in the Foreign Exchanges ; and we have seen that the restoration of the coinage immediately rectified the Exchange. At that time Bank Notes were not a legal tender, and the language invariably applied to them, when their current value differed from their nominal value, was that they were at a *discount*. When the men of that day saw that the Bank Notes were a promise to pay so many "pounds" on demand, and when they saw that the persons who issued them were unable to pay that number of pounds, and that no one would give that number of pounds for them, they never used any other expression regarding these facts, than that the notes were at a discount. There is no trace of any one having thought of saying that it was the notes that denoted the pound sterling, and that bullion had risen. When the reform of the coinage took place, and the Exchanges were simultaneously rectified, it was said that the reform of the coinage *caused* the restoration of the Exchange, and numerous merchants had written pamphlets to combat a delusion which was rather prevalent among some persons, that Bullion, as a commodity, could have a different value to Bullion as Coin, except on account of the depreciation of the coinage

3. Adam Smith had laid it down as a principle that any permanent difference between the Market and the Mint price of bullion must be necessarily caused by the condition of the coinage itself; and Hume had observed that the Exchange never could vary but little beyond the cost of the transmission of specie. All these fundamental truths, which are as pure matters of demonstration as any proposition in Euclid, had been discovered and established long before the period we are now speaking of

4. Such were the truths established, when a Metallic Currency was the only one thought of, in estimating value. But at this time a new principle was introduced—there was what was substantially an incontrovertible Paper Currency. At this period most men's ideas were transferred from the Metallic Currency to the Paper Currency. Ever since the issue of £1 notes people thought of them, when they spoke of prices, as being so many pounds. When the suspension of cash payments first took place, there was a general expectation that the Bank Notes would be depreciated, but the general resolution of bankers and merchants to support the credit of the Bank, the determination of the Government to receive Bank Notes in payment of taxes, at their par value, and the great caution exercised by the Directors during the first few years after the restriction, had removed all these apprehensions, and, for some years, Bank Notes circulated at par

5. At this time, however, phenomena occurred which directed the attention of many persons to the state of the Paper Currency. The market price of standard gold, up to September, 1799, had continued at £3 17*s.* 6*d.* per ounce, and the price of foreign gold in coin had been somewhat higher, on account of its greater use as coin than as bullion. But in June, 1800, the price of foreign gold experienced a sudden and extraordinary rise: it rose to £4 5*s.* per ounce; silver rose 5*s.* 7*d.* per ounce; and the Foreign Exchanges fell below par. In January, 1801, gold and silver had each risen 1*s.* per ounce, and the exchange at Hamburg was 29*s.* 8*d.*, being a depression of 14 per cent. below par. But the expense of transmitting specie to Hamburg was estimated not to exceed 7 per cent.; and, consequently, there remained a difference of 7 per cent. to be accounted for

THE

THEORY AND PRACTICE

OF

BANKING

CHAPTER X

FROM THE RENEWAL OF THE BANK CHARTER IN 1800 TO THE ACT FOR THE RESUMPTION OF CASH PAYMENTS IN 1819

1. Soon after the year 1800 a remarkable phenomenon began to attract the notice of persons who had paid attention to the Currency. We have just seen how lamentably deficient the harvest of 1799 had been, and the enormous quantities of grain it became necessary to purchase. The autumn of 1799, and the ensuing winter, were equally unfavourable as the preceding had been to all descriptions of farming operations. The spring of 1800 was exceedingly wet; and, in the middle of the harvest, heavy and continuous rains set in. In consequence, the harvest-time was even more calamitous than the preceding one. In the north part of the island the crops were a total failure. Notwithstanding that the unprecedented quantity of 1,242,507 quarters of wheat were imported, prices continued to rise to a famine scale. The public peace was with difficulty preserved, and in November,

when Parliament met, the country was in a very alarming condition. Parliament pursued the usual course, recommended the most stringent economy in the consumption of provisions, and offered to guarantee 100*s.* a quarter to all who imported wheat. In spite of all these measures, wheat rose in March, 1801, to 156*s.*, barley to 90*s.*, and oats to 47*s.* In the autumn of 1799, failures of great magnitude took place in Hamburg : 82 houses came down with liabilities amounting to £2,500,000. In consequence of these, discount rose to 15 per cent. Under the influence of the enormous sums of money that had to be sent abroad in purchase of grain, the attraction of this high rate of discount, and other causes, the exchange on Hamburg, which had stood so high for some years, fell in January, 1801, to 29·8, being upwards of 14 per cent. against England

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6. It was at this time that the great and palpable truth was discovered, that if a deterioration of the coinage produced a rise of the Market price of bullion above the Mint price, and a fall in the Foreign Exchanges under a Metallic Currency, then that the opposite proposition was also necessarily true. That under a Paper Currency which was only the representative of a Metallic Currency, if the Market price of bullion (*i.e.*, the paper price) exceeded the Mint price, and the Foreign Exchanges fell beyond the cost of the transmission of specie, that excess could only arise from the depreciation of the representative of the Metallic Currency, and, therefore, that when these circumstances occurred, **they infallibly indicated that the Paper Currency was depreciated**

7. We are not certain to whom the merit of the discovery of this great and important truth is due. If he had not the actual merit of discovering it, Mr. Walter Boyd was certainly one of the first to proclaim it, and call public attention to it. It was enforced with much greater ability and clearness by Lord King, and with not so much distinctness by Mr. Henry Thornton, in his *Inquiry into the Effects of Paper Credit.* To these three writers, however, as far as we have been able to ascertain, the merit is due of establishing this principle, which is as important in the subject of Currency as the Newtonian law of gravity is in astronomy

8. The preliminaries of peace with France were signed in October, 1801, at London, and the definitive treaty at Amiens, on the 27th March, 1802. The restriction on cash payments expired of itself six months after that event; but, though the Bank declared that its coffers were well supplied with specie, and that it was anxious and ready to resume payments in cash, the Chancellor of the Exchequer, Mr. Addington, brought in a bill on the 9th April, 1802, to continue the restriction till the 1st of March, 1803, which was passed. The arguments alleged in favour of this measure shew a wonderful decline in financial knowledge in the Government of 1802 compared to 1696. At the latter period the great reason alleged for the reformation of the coinage was the adverse condition of Foreign Exchanges, and the rise of the Market above the Mint price, caused by the depreciation of the Currency. Notwithstanding the vehement

opposition of the enemies of the Government, we have seen the triumphant success of the re-coinage, which restored the public credit and the Exchange. The sagacity of a Montague would at once have seen that the adverse state of the Exchange, and the high price of bullion, were entirely owing to the depreciated state of the Currency, and that the only method of restoring them to par was the immediate resumption of cash payments. So great, however, was the ignorance upon the subject, that the fact of the exchange being adverse was the very reason alleged why cash payments should *not* be resumed! Sir R. Peel said the course of exchange was, at this moment, against us all over Europe. Mr. Addington, in bringing in the bill, said—

"It cannot be necessary for me to inform the House that the Rate of Exchange between this country and foreign parts is disadvantageous to ourselves—that the export trade has been for some months at a stand, that while the Rate of Exchange is disadvantageous *to us, an augmentation of the circulating cash* would create a trade highly injurious to the commerce of this country. *For several months past, there has been a trade carried on for purchase of guineas with a view to exportation.* It is on these grounds that I submit to the House the expediency of continuing the restriction with regard to the cash payments of the Bank"

Why, these were the very reasons why a return to cash payments should have been made without delay! The reason why the trade of buying up guineas was going on was just because of the redundant quantity of paper; the paper "promises to pay" were falling in value as compared to the guineas, and, as a necessary consequence, guineas were exported, and, so far from a return to cash payments augmenting the circulating medium, it would infallibly have considerably diminished it by making the Bank reduce its paper issues. It was because the prices of articles were so high in this country that the export trade was unprofitable, and a reduction of the Bank notes would infallibly have compelled such a reduction in prices as would have facilitated the export

9. The result of this extraordinary amount of financial error could have been easily predicted. The circumstances of the country did not improve, as the Ministry had taken the most

effectual measures to prevent them doing so. In February, 1803, Mr. Addington had to come forward again to prolong the restriction. He said that the reasons which suggested it were too strong, and the necessity too urgent, to be resisted. The restriction was continued last Session because the Exchanges were adverse—the Exchange at Hamburg was then at par—that with Amsterdam adverse. Upon these grounds, he said, it was expedient to continue the restriction, until the progressive advance of our commerce would produce such a steady inclination of the Exchange in our favour, as to render it safe to resume cash payments. That the scarcity of the last three years had made it necessary to export twenty millions of bullion in payment of corn, and until that came back cash payments could not be resumed. Mr. Fox said that such a mode of arguing went to establish it as a general axiom that, whenever the exchanges were adverse, cash payments of the Bank ought to be suspended; and then he touched the right point. "Perhaps, even, it might happen that the unfavourable turn of the exchange against this country *might be owing to the very restriction on the Bank.*" And he said—

"In 1772, or 1773, when there was a great quantity of bad money in the country, the course of exchange was then also much against us, but when, in the room of this adulterated money, good gold was substituted, the consequence was that the Exchanges turned almost immediately in our favour. As long as our Currency continued bad, the exchange was against us, so it is now, *because paper is not much better than bad gold;* as it is attended with the same inconveniences. May it not, therefore, be expected that, as in the former case, when our Currency was ameliorated, the course of Exchange turned in our favour, so also if the Bank now resumed its cash payments, the same favourable circumstances might attend the change?"

The trace of truth thus hit upon was not followed up; and, while the directors of the Bank alleged that they were perfectly able to resume cash payments, the Ministry enforced a continued restriction upon them, for political reasons, until six weeks after the beginning of the next Session of Parliament. In the Lords, Lord Pelham said that the idea of renewing the restriction at the present moment originated solely with the Government, who

had had no communication with the Bank on the matter. The great truth doubtingly hinted at by Mr. Fox, was much more strongly and fully stated by Lord King and Lord Moira in the House of Lords. The Ministry complained that the importation of bullion was hanging fire; was it not plain that the reason was that its value in this country was depreciated by the plethora of paper? and the true way to attract it was by diminishing the quantity of the paper, and so raising the value of the gold. The bill was carried without a division

10. If the resumption of cash payments was unadvisable under the preceding circumstances, the untimely end of the short and feverish peace in 1803 rendered it still more impracticable: and, immediately upon the opening of the Session, a bill was brought in to continue the suspension. We find it stated that the hoarding of guineas had been going on to such an extent, that it was with the utmost difficulty that they could be procured for the common purposes of life. The Chancellor of the Exchequer talked of the baseness of such a practice, which was inconsistent with public spirit and the duty of a good citizen. Precisely the same language had been held by the revolutionary leaders in the tribune of the French Convention regarding assignats. The debate in the Lords produced some excellent speeches. Lord Grenville, who had been of the Cabinet who proposed the suspension originally, now gave very evident signs that his opinion was very much altered, and severely censured the attacks of the Chancellor of the Exchequer upon those who preferred to keep their guineas at home. Lord King now gave the clearest enunciation of the principles of a Paper Currency, which had before been rather feebly hinted at. He said—

"The natural and only true limit of every Paper Currency was the power of compelling payment in specie, at the will of the holder. A Paper Currency, not convertible into specie, had no rule or standard except the discretion of the persons by whom it was issued. To determine the quantity of currency necessary for circulation was in all cases a difficult and delicate problem. *A very strict attention to the price of Bullion, and the state of the Foreign Exchanges, was alone capable of affording a just criterion by which the quantity could be truly ascertained.* Without a

perpetual reference to these tests it was impossible to maintain the full value of the Currency. That the Bank directors had failed in the performance of this duty was evident, from the enormous increase in the quantity of their notes, and the great derangement which had taken place in the price of silver and the Foreign Exchanges since the period of the restriction. He said that the excessive quantity of Bank notes, by raising the Market price of silver above the Mint price, was one of the causes of the present scarcity of the silver coin"

11. The Act which restrained the Bank of England from paying in specie also enacted that country bankers should be liable to discharge their notes in Bank of England paper. Hence the very same rules applied to the issue of the country banks, where paper was converted into Bank of England notes, as formerly applied to the Bank paper when convertible into specie; and the country Bank paper was based upon Bank of England paper, just in the same way as the latter had been based upon specie. So the Directors of the Bank not only controlled their own issues, but those of every other Bank in the country, and any excess of paper issued by them was immediately multiplied and propagated throughout the kingdom

12. The facilities of communication with the metropolis, even in that age which we are now accustomed to consider as slow, as compared with our own, were sufficient to prevent the depreciation of a local currency in Great Britain, at least since 1765, when the Scotch notes were depreciated, on account of certain conditions they contained impeding their payment in gold on demand. But Ireland, from the distance of the sea passage, and the difficulty of access, might be considered as a foreign country: which resemblance was further promoted by its having a Currency of its own, distinct from that of Great Britain. The Irish shilling in those days contained 13 pence, and as the pound, both English and Irish, was 240 pence, a slight calculation will shew that £100 English=£108 6*s.* 8*d.* Irish, Hence the par of exchange between England and Ireland was called eight and one-third

13. Although there was no run upon the Bank of Ireland, and the Exchange with England was favourable, and bullion was flowing in, the Bank of Ireland was directed by Parliament to suspend its payments in cash at the same time as the Bank of England, and an Act was passed by the Irish Parliament containing analogous provisions to the English Act

14. Ever since the year 1794 the Exchange at Dublin on London had been uniformly in favour of Dublin, standing usually about £7 10*s.* In the first three months of 1797, it rose so high as £6 14*s.* 9*d.*; in the second three months it rose to £6 7*s.* 2*d.*; and in the third period of three months, it attained the very great height of £5 18*s.* 10*d.*; the highest it stood at on any day being £5 10*s.* From that period it began steadily to decline, and it continued to fall progressively through each year, until in January, 1804, it reached the extraordinary depression of £18. No guineas were to be had for Bank of Ireland notes, except at a premium of 2*s.* 4*d.* or 2*s.* 6*d.* This enormous depression was noticed by Lord Archibald Hamilton, on the 13th February, 1804, in the debate on the Irish Bank Restriction Bill. He stated that, when the Restriction Act passed, the issues of the Bank of Ireland were £600,000, whereas now they were £2,700,000. He said that between Dublin and Belfast, though not more than 100 miles apart, there was a difference in the Exchange of 10 per cent., and that in the Exchange with London it was sometimes as much as 20 per cent. against Dublin. That gold coin rose in value just in proportion as paper was depreciated

15. This great disorganisation of the monetary business between the two countries at length excited the serious attention of Parliament, and, on the motion of Mr. Foster, a Committee was appointed "to inquire into the cause of the present high rate of Exchange between Great Britain and Ireland, and the state of the Currency in the latter kingdom." The Committee consisted of Mr. Foster, Lord A. Hamilton, Lord Henry Petty, Lord Folkestone, Mr. Pitt, Mr. Fox, Mr. Grey, Mr. Rose, Mr. Canning, Sir W. Pulteney, Sir J. Newport, Mr. J. C. Beresford, Mr. Sheridan, and Mr. Brogden

16. The circumstances which gave rise to the appointment of this Committee and its report, are deserving of great attention, as they are the first regular investigation by Parliament into the theory of the Paper Currency, and they were the antetype of what afterwards occurred in England, and gave rise to the appointment of the Bullion Committee

17. The Bank of Ireland sent two of its Directors to be examined as witnesses, Mr. Colville and Mr. D'Olier. Mr. Colville stated that the issues of the Bank notes at the time of the restriction were between £600,000 and £700,000, but they were now about £3,000,000; and when asked the motives for such an extraordinary increase, said that the Exchange became extremely adverse about two years after the restriction: the money of the country was carried out of it, for the purpose of paying the balances of remittances: and, consequently, as the medium of gold decreased, *it became necessary to supply its place with paper*. He said that, after the restriction, it was necessary to supply notes for the payments that would have been made in guineas, and this amount he placed at £1,200,000. He admitted that before the restriction, whenever there was a drain of gold from the Bank, they were in the habit of diminishing its issues to strengthen themselves against the continuance of the drain. That whenever the Exchange was unfavourable, the necessity for self-preservation compelled them to reduce their issues, and that this limitation was for the purpose of lessening the drain of guineas. But he said that it was generally thought that the extension of paper in Ireland was the cause of the high Exchange, but, in his opinion, it was directly the reverse, inasmuch as far as the circulation of paper has supplied the circulating medium, it enabled the gold which before stood in its place to be exported out of the country, and so far was a clear and decided cause of preventing the Exchange getting to a higher pitch; and he said that it must appear that his opinion was that the circulation of Bank paper in Ireland was in no shape the cause of the high exchange. He said that he clearly and decidedly considered the sole cause of the high rate of Exchange to be that Ireland owed a great deal more money than she could pay. He considered the true criterion of such balance of debt to be the state of Exchange

between Dublin and London, and London and Dublin. That when the Exchange was considerably above par it was said to be against Ireland, and in that case certainly at that time Ireland owes more money than she is able to pay. Mr. Colville repeated these opinions several times: more often than it is necessary to quote. When pressed with the question whether the Rates of Exchange might be influenced by the value of the medium in which the balance of debts was paid, as, for instance, if it were paid in degraded or adulterated coin, he admitted that it might be so with respect to *coin*, but he denied that such views in any way applied to Bank of Ireland paper. Mr. D'Olier coincided with these views, and attributed the state of the Exchanges to the same causes. When asked whether it was possible, in any case whatever, for there to be such an augmentation of inconvertible Bank paper as to diminish its value in exchange for goods, although the confidence that they might be paid off at some remote and indefinite period might be maintained, he said he thought it possible, but not probable. He said—"I have heard it stated that because gold is bought at a premium, that, therefore, Bank of Ireland notes are by so much depreciated, and at an absolute discount as to the amount of that premium. That was not the proper way to look at the question. The circulation said to be depreciated must first be proved to have become burdensome to the holders, and bargains to have been made by unnecessary purchasers to get rid of that which they found inconvenient, or were apprehensive to hold. The mere buying of gold at an advanced price beyond that of the Mint, is the effect, and not the cause, of the Exchange, and, therefore, no proof of the depreciation of the paper itself." As both these witnesses maintained that the Exchanges might be depressed to any extent by the mere fact of debts being due by the country, it is much to be regretted that the Committee did not ask them if it were possible, in their opinion, for the Exchange to be depressed beyond the limit of the expense of the transmission of bullion, and, if so, how it could be possible?

18. The description given by the witnesses of the state of the Metallic Currency was most astonishing. Mr. D'Olier had some of it weighed. The base currency took about 126*s.* to the

pound weight; the Mint silver which was in circulation, was very scarce and very much worn, contained 94*s.* 6*d.* to the pound weight, whereas, when new from the Mint, it contained 62*s.* to the pound weight. Of the base shillings, the best did not contain more than 6*d.*, and the worst about 3*d.* These base pieces were coined and sold privately to agents who had the means of circulating them, at 28*s.* to 35*s.* the guinea. When such was the state of the Metallic Currency in Dublin, the provinces in the south were even worse off. One witness stated that the silver Currency had totally disappeared from the southern parts, that the vacuum was supplied by silver notes; that these silver notes had driven out the whole of the silver Currency, and from their increased amount, as well as the increasing issues of private bankers' notes of every other description, prices had risen greatly. That the bad Currency had been increasing most mischievously during the last twelve months, that there was still a very good supply of good silver in the south which was hoarded on account of these silver notes; but if they were suppressed, it would come into circulation again. He said all sorts of traders, as well as bankers, issued notes for 3*s.* 9½*d.* and 6*s.*, payable at twenty-one days after date. He thought that the increase of the paper circulation augmented the state of Exchange against Dublin. That the premium on guineas was a proof of the depreciation of the Bank notes; and that as the Exchange rose the depreciation continued. That the premium on guineas was then 7 or 8 per cent. He himself had bought large quantities of guineas at a premium of 2*s.* 6*d.* each. In the north of Ireland, however, all bills were payable in gold; they would have nothing to do with any Paper Currency, and while the Exchange on Dublin was 16 (7 two-thirds below par) the Exchange on Belfast was 7 or 8 per cent. (one-third above par). He argued that, since the exchange in gold was favourable to Ireland, the Real Exchange must be in her favour, and that if any considerable quantity of gold came into circulation it would at once tend to diminish the premium on guineas, and lower the rate of Exchange. However, he thought that the high state of the Exchange was a clear proof that the balance of payments was against Ireland annually. While no Bank of Ireland or private Bank notes could be exchanged for guineas, except on paying a premium of 2*s.* 6*d.*

each, Bank of England paper bore exactly the same premium as guineas, and were received in every transaction as equivalent to guineas. And yet the directors of the Bank of Ireland maintained that their notes were not depreciated!

19. In the north of Ireland, where nothing but gold was current, and paper was tabooed, the Exchange at Belfast with London had always continued favourable to Belfast, and even while the Exchange at Dublin was progressively sinking, the Exchange at Belfast continued to rise; thus, the state of the Exchanges during the years 1803 and 1804, when the Committee were appointed, was as follows:—

1803.		Dublin.	Belfast.
Average of 1st quarter	...	£11 1 9	£7 12 6
2nd	...	13 8 11	8 8 8
3rd	...	15 17 0	7 12 6
4th	...	15 8 7	5 12 6
1804.			
January 27th	...	18 0 0	6 0 0

There was, therefore, at that time, a difference of 12 per cent. between the Exchange at Dublin and at Belfast. Consequently, if the opinions of the Directors of the Bank of Ireland were true, enormous payments were being made from Dublin to London, and a balance of payments was due from London to Belfast. However, Mr. Marshall, the Inspector General of Imports and Exports at Belfast, held a very different opinion with respect to Irish Bank notes, for he appends to the table of Exchanges prepared by him this note—

"It has certainly been heretofore held as a maxim of commerce, that the balance of trade has in a great measure regulated the Rate of Exchange; and if specie was equally in circulation in England and Ireland as formerly, the criterion would, no doubt, still be tolerably just. *But the issue of paper in Ireland is so great as to make it subject to a heavy discount,* whilst in England it circulates without any depreciation at all. *I imagine the Rate of Exchange between the two countries, therefore, is very much influenced by the rate of discount on Irish Bank notes*"

20. It is scarcely necessary to observe that if the opinion of the Directors of the Bank of Ireland were true, that the Rate of Exchange at Dublin on London was due entirely to the heavy debts due from Ireland to England, their townsmen must have been great simpletons to purchase bills on London in Dublin at such an enormous sacrifice, when they could have got them at Belfast 10 to 12 per cent. cheaper. But it appeared that specie was at a premium of 10 or 12 per cent. in Dublin, so that the bills, when paid for in *cash*, were exactly the same rate in Dublin and Belfast

21. In order to test the *fact* that the Rate of Exchange was due to the excess of payments owing by Ireland, the Committee had evidence on the subject, and it appeared most decisively that so far from the balance of payments being against Ireland, there was a very large balance in her favour. The witnesses differed as to the precise sum, but they agreed as to the fact of there being a large sum due to Ireland, and, consequently, that the Exchange ought to be in her favour, *which was precisely the case at Belfast, where payments were made in specie.* With this incontrovertible evidence before them, the Committee did not hesitate to express their conviction that the real balance of pecuniary transactions was greatly in favour of Ireland, and that, consequently, the Real Exchange was and ought to be under par, and that they felt themselves compelled to seek in other causes than the balance of debts for the unfavourable Exchange then existing between them

22. We have already seen that when in 1696 the silver coinage was being recoined, a difference arose between Bank notes and specie of 20 per cent., and between tallies and specie of 40 per cent., it was universally said that Bank notes and tallies were at a discount of 20 and 40 per cent. There is no trace of any other language but that being applied to them. In the year 1804 Irish Bank notes were exchanged for specie at a difference of 10 per cent., so that, with a guinea in specie, any one might purchase a guinea note and 2s. or more in silver. The merchants of 1696 would have expressed such a state of things by saying that the note had fallen to a discount of 10 per cent. But at this period

a new mode of expressing it was discovered; it was stoutly maintained that it was not the paper which was depreciated, but the guinea which had risen in value! Thus, one witness being asked —"Do you know that the Bank of Ireland paper is depreciated?" said—"I am not aware of it, because I should not say paper was depreciated, unless there was a forced issue of it, and that it was offered at a discount on all occasions. I should rather now say that gold is increased in value than the paper is depreciated." When asked—"What do you consider to be the best criterion of the depreciation of paper currency, an alteration of its value compared with the general property of any country, or its alteration compared with a given article, viz., guineas?" he says—"I think the first the best criterion, because guineas may be wanted, as in the present case, for special purposes." It is somewhat surprising that the witness did not remember that Bank notes are a "promise to pay" guineas, and they are not a promise to pay any other kind of property. When asked—"Do you not conceive that the fact of a premium existing on English Bank notes in Ireland and exchanged for Irish Bank notes, affords some indication that it is Irish paper which is depreciated, and not the price of gold which is locally raised?"—"I do not." Other witnesses agreed in these opinions. When we consider the nature of an Exchange, and the state of facts proved with regard to the Irish coinage, at that time, we might almost smile at these ideas, and attribute them to the peculiar methods of thinking which are sometimes prevalent on the western side of St. George's Channel; but we shall find that when a precisely similar state of things took place in England, with regard to the Foreign Exchanges, the very same doctrines were long and stoutly asserted by a very numerous party in this country, and would probably be so again under similar circumstances

23. There was one witness, however, who held very different opinions—Mr. Marshall, the Inspector General of Imports and Exports. He said that there were shops in the principal streets of Dublin for buying and selling guineas, and that the retail price of a guinea then was a paper guinea and 2*s.* 2*d.* He said that at the end of December, 1803, the price of a bill in Dublin upon London for £100 British was £116 10*s.*, if bought with Irish Bank notes, but if purchased with specie the price was only £106 10*s.* Irish.

The same thing was observable in all domestic transactions. The man with a gold guinea in his pocket, going to market, had the advantage of the same premium over the man with the paper guinea, so he could go to a specie shop, and with his gold guinea buy a paper guinea and the premium; then he had a paper guinea of the same value as the other man and the premium besides. Bank of England notes were exactly equivalent to guineas. From all these facts, it appeared that the Irish Bank note wanted 10 to 12 per cent. of the value of specie. It was contended that this was due to the rising in value of specie, and not to the depreciation of notes; but if specie had risen so much in value, or, which was the same thing, if commodities had fallen so low as 10 or 12 per cent., such a state of things could not have continued for any length of time, because such a degree of cheapness would have attracted specie from Great Britain, where it had not risen. Moreover, Bank notes had been issued at par with specie, at its current value, whatever it was, and they ought to have risen *pari passu* with it, so as to be exchangeable with it, and, therefore, whatever they wanted of this exchangeable property must be considered as a falling off from their original value, or a depreciation to that extent. And, therefore, he was clearly of opinion that the Irish paper currency was depreciated

24. After shewing that the balance of payments had been for a long series of years favourable to Ireland, but that the exchange had never ceased to be greatly depressed, he was asked—"Do you also mean, on the whole of your evidence, to give it as your decided opinion that there is and has been a depreciation in the paper currency in Ireland, and that the high rates of exchange, which have prevailed and still prevail, have arisen from the depreciation?"

"I do; the high exchange in Dublin which has now continued for some years, **must, no doubt, have arisen, like all other permanently high Exchanges which have ever existed, from the depreciated state of the Currency with which Bills of Exchange are purchased,** and the same remedy might, perhaps, be resorted to with success in the present case, which has never failed to be

effectual on all former occasions, namely, a removal of the depreciation"

These are the ideas of the men of 1696; we shall find a long dreary period elapse before their truth was again generally recognised in this country. The amazing absurdity of supposing that the Exchange could have fallen to 118, on account of the balance of payments alone, can be easily shewn. We cannot suppose that the cost of transmitting the specie from Dublin to London could have been more than £2 at most. Consequently, as £108 6*s.* 8*d.* was the par of exchange, if the rate of the Exchange fell below £110 6*s.* 8*d.*, it would have been cheaper to send the specie itself. Surely, the Irish would never have been so foolish as to pay £118 in Dublin to purchase a debt in London of £100, when they could place the cash itself on the spot for £110 6*s.* 8*d.*

25. The directors of the Bank of Ireland had admitted that before the Restriction Act they were obliged to regulate their issues of paper by the price of guineas and the Exchange with London. Whether they had an unusual demand for guineas, and the Exchange was adverse, they had been obliged to diminish their issues to prevent the continuance of the demand for guineas. As soon, however, as they were released from paying in cash, they no longer thought themselves bound to follow the same rules, and we have seen how prodigiously they had extended their issues. They admitted, however, that it was a possible case, that their issues might be too great, and a new theory was now advanced which we shall be called on to discuss at some length in a future chapter, but we notice it now because this appears to have been the first occasion it was propounded by mercantile men. Mr. Irving being asked if, in his opinion, Irish Bank notes were depreciated, said that he did not think so, although guineas were selling at a premium—

"Explain your reasons"

"I am of opinion that a bank managed with prudence, would only issue notes in proportion to the demand which may be made for those notes in exchange for good and convertible securities, such as mercantile bills of exchange, payable at specific periods of undoubted respectability, founded upon real mercantile trans-

actions, upon Government securities, such as exchequer bills, in the purchase of Spanish dollars, or other bullion; and the circumstances of the bank notes of Ireland being demanded for such good and convertible securities, I am of opinion, is a proof that they are not too large in amount, and that their value is not depreciated"

We shall see afterwards that this theory was adopted by the directors of the Bank of England. It is one quite opposed to that by which the Irish directors acknowledged themselves obliged to follow whilst they were liable to pay their notes in gold. Hence, if it was correct, it inevitably followed that the issues of a Bank should be governed on totally different principles under a convertible and an inconvertible paper currency

26. After accumulating a considerable body of evidence upon the subject, and examining witnesses of all sorts of various opinions and various professions, the Committee reported that the Real Exchange was in favour of Ireland, and that the difference between the Real and Nominal Exchange arose from the depreciation of the Irish paper. They pointed out the absurdity of supposing that the value of gold had risen, and not that the paper was depreciated. They said that the difference between the Rate of Exchange could never vary more than the cost of transmitting specie from one to the other, and that any excess above that could only arise from other causes. They then noticed the enormous increase of the paper currency that had taken place, since the only check against over-issue was removed, namely, convertibility into gold at the will of the holder—the great quantity of base and counterfeit coin fabricated and forced into circulation—and shewed that, under an unfavourable state of the Exchange, the paper currency had always been diminished. "If prudence had not dictated such a course, necessity would have compelled a diminution of issues, by diminishing the stock of specie which could only be replaced at a loss proportionate to the existing rise of Exchange, and your Committee observe that, in fact as well as in theory, the result of such practice always was and must be the redress of the unfavourable Exchange. Since the Restriction Act, however, the directors had acted exactly upon the opposite principle, when the Exchange was unfavour-

able, they had greatly increased their issues. Excessive issues of paper produce a proportionate rise in the Rates of the Exchange, for these are obviously influenced by the value of the medium in which the payments are made and the *quantity* of that medium necessary to effect a given payment must be increased as the value of the medium diminishes, no matter whether the payments be made in a degraded and adulterated coin, or in a depreciated paper. If paper by depreciation comes to represent a less quantity of money than it professes to do, it must make the Exchange which it is to pay appear unfavourable, in the same manner as coin in which it were to be paid would have done, if by degradation it should cease to contain the same portion of gold which it used to do; and the removal of the degradation in the one case, and of the depreciation in the other, would have the same effect in bringing the Exchange to par, or whatever might be its real state"

27. After recommending several minor remedies the committee said—"But all the benefits proposed by this mode of remedies would be of little avail, and of very limited duration, if it did not promise at the same time to cure the depreciation of paper in Ireland, by diminishing its over-issue. . . . . And your Committee do, in express terms, declare their clear opinion, that it is incumbent on the Directors of the Bank of Ireland, and their indispensable duty, to limit their paper at all times of an unfavourable Exchange, during the continuance of the restriction, exactly on the same principle, as they would and must have done, in case the restriction did not exist, and that all the evils of a high and fluctuating Exchange must be imputable to them if they fail to do so"

28. They then noticed the miserable state of the silver coinage, or rather the base metal, and notes and I O U's substituted in its place, which they said was clearly to be traced to the unfavourable Exchange. As long as the Exchange continued in that unfavourable state, all the genuine silver coin transferred itself to England, and the place of the genuine silver coin was supplied by these small silver notes in the country districts, and in Dublin, where they were not issuable, by an

extremely base silver coinage which was privately fabricated in great quantities, all of which evils could only be cured by the restoration of the Exchanges to their true state, and the issue of a genuine silver coinage

29. The Committee contented themselves with declaring, in the most emphatic terms, that the Bank of Ireland ought to regulate its issues by the state of the Exchanges, but it did not discuss the new theory propounded, that the Paper Currency should be regulated by the mercantile Bills of Exchange offered for discount. No one who has paid any attention to the principles of the subject, and carefully considered the facts produced before the Committee, can fail to acquiesce in their judgment, and we cannot fail to remark that none of the professional witnesses, *i.e.*, the directors of the Bank of Ireland, or the other Bankers examined, had attained the smallest glimpse of the principles which governed their own business, and by which they should have directed their policy. Its true principles were clearly seen and announced solely by the extra-professional witnesses, and laid down by the statesmen who formed the Committee. We may suppose that fear of giving offence to their customers, and so diminishing their business and profits, may have somewhat dimmed their perception

30. As it was evident that as long as the different Currencies between the countries continued, there must be an Exchange from the want of a common medium of payment, the Committee strongly recommended that the moneys of circulation and account should be assimilated, and that Bank of Ireland notes should be payable in Bank of England paper, and that the Bank of Ireland should establish a fund at their credit in London for that purpose, and that all bills should be payable at a fixed date, which measures had been found to reduce the Scotch Exchanges to par, and maintain them so ever since the year 1763, through all the political and commercial convulsions of the period

31. The presentation of this report does not seem to have excited any discussion in the House till many years afterwards. In 1809 Mr. Parnell moved that the Currencies of England and

Ireland should be assimilated in accordance with the recommendation of the Committee, which was rejected without a division. The Report does not seem to have been printed for public circulation till 1826; but it was probably communicated to the Bank, and produced some effect upon their policy. A fact was stated by Mr. Foster in the House that in the months of May, June, and July, 1804, the directors diminished their issues from three to two millions and a half, and the Exchange rose; in August they increased them again, and the Exchange fell. The Chancellor of the Exchequer (Addington) declared that it was a perversion of terms to infer that the depreciation of paper had any real effect on the Exchange. The excessive issue of paper might produce a depreciation, but each country had a different circulating medium, and the depreciation of either could only have a nominal effect on the course of Exchange. Mr. Addington wholly overlooked the fact that payments were made in Bank of Ireland paper, and the course of Exchange referred to that paper. If payments had been made in silver coin of full weight, then it would have been true that the Exchange would not have been disturbed by the depreciation of the paper. But the course of Exchange always relates to the medium in which the payment is actually made, and a depreciation of that medium necessarily causes an adverse state, in whatever state the other parts of the Currency may be, which are not the medium of payment. Of this we have seen a conspicuous instance in 1696, when the restoration of the silver coinage immediately rectified the Exchange, although Bank paper continued to be depreciated long afterwards. Mr. Fox, with premature exultation, said that he was glad to hear that the Chancellor of the Exchequer allowed that an excessive issue caused a depreciation, and that the House was never again to hear *the fantastical opinion that the paper was not depreciated, but the value of gold raised.* Had Mr. Fox been able to look forward only six years he would have found that this fantastical opinion not only re-appeared, but was maintained with more stubbornness and pertinacity than ever

32. Such was the occasion of the first declaration by a Parliamentary Committee, of the principle that the issues of the

Bank should be regulated by the Foreign Exchanges; a Committee, comprehending almost all the great names of the different parties of all opinions. As it was not then the custom to publish the lists of the divisions in committees, we are not able to say whether they were unanimous on the subject; but, from the exceedingly strong and decisive language of the Report we may fairly infer that the opinion of the Committee was equally strong and decided, and that if any minority differed from the resolutions of the majority, it must have been a very small one

33. We have not much to detain us in the few following years. In 1804 the scarcity of the silver coinage was so severely felt, that the Bank issued 5*s.* dollars to supply the want, of which 1,419,481 were put into circulation. In 1806 the loan of three millions, which was the consideration for the renewal of the Charter in 1800, became due; but the Bank was persuaded to renew it at 3 per cent. per annum until six months after the ratification of peace. In 1807 a Committee was appointed to inquire into the various branches of the public expenditure, and, amongst others, into the payments made into the Bank of England. In the second report are some interesting details respecting the connection between the Bank and the Government

34. At this period political circumstances occurred, which led to a great derangement of the British currency, and of which we may be allowed to give a short summary—"For ten years (before 1805) Prussia had flattered herself that, by keeping aloof, she would avoid the storm, that she would succeed in turning the desperate strife between France and Austria to her own benefit, by enlarging her territory and augmenting her consideration in the North of Germany, and, hitherto, success had in a surprising manner attended her steps. At once all her prospect vanished, and it became apparent, even to her own Ministers, that this vacillating policy was ultimately to be as dangerous as it had already been discreditable." The state of universal contempt into which Prussia had fallen, precisely similar to that which she did in the Crimean War from an analogous course of conduct, was at last too strong even for her, and just then the

Emperor Alexander arrived at Berlin, and, by his influence, a secret treaty was signed on the 3rd November by the two States, to curb the ascendency of France in Europe. Prussia bound herself, in the event of Napoleon not agreeing to certain conditions to be offered him, to declare war against him on the 15th December, and the King bound himself by the most solemn oaths to adhere to his engagements. After considerable delay, the Prussian Minister started for the head quarters of the French Emperor on the 28th. Napoleon, who was then manœuvring in preparation for the Battle of Austerlitz, but who was perfectly aware of the nature of Haugwitz's mission, put off receiving him for a short time, and sent him to Vienna. On the 2nd December, Napoleon destroyed the Russian and Austrian armies in the great Battle of Austerlitz, before the eyes of their respective sovereigns, and the Prussian Minister immediately rushed off to congratulate Napoleon on his successes! and to propose to him a treaty of Alliance by which Prussia was to seize all the continental dominions which belonged to her ally the King of England. This treaty was signed with Napoleon on the 15th December, the very day on which Prussia had agreed to declare war against him. In the following March, Prussia, under the compulsion of Napoleon, issued a decree, prohibiting British merchandise from entering any port in the Prussian dominions, thus cutting off a principal source of the supply of corn to Great Britain

35. Swift and sure was the retribution that fell upon Prussia for her matchless meanness and perfidy in 1805. Napoleon was perfectly informed of the object of Haugwitz's mission to him. "You have come," said he, "to present your master's compliments on a victory, but fortune has changed the address of the letter;" and, though he was too anxious to forward a measure which would consign her to public infamy, and embroil her with Great Britain, he did not, nevertheless, for one instant from that time, pause in his determination to destroy her at the first opportunity. "From the moment the treaty was signed, Napoleon did more than hate Prussia, he conceived for that power the most profound contempt." He proceeded to treat her with the most unmeasured arrogance, and, after a series of aggravated insults, that perfidious power was astonished to discover that Napoleon was

secretly treating with Great Britain for the restitution of Hanover to its lawful sovereign. Negotiations for peace had been going on for some considerable time between France, England, and Russia, which led to nothing. The popular ferment in Prussia had been increasing for a long time from her disgraceful position becoming more notorious and galling every day, and the Government, with a rashness, violence, and imprudence only to be surpassed by its perfidy, sent a haughty summons to Napoleon to evacuate Germany. This insane insult reached Paris on the 1st October, when Napoleon was already far on his way to Berlin, and on the 14th, Prussia met her well deserved doom at the twin battles of Jena and Auerstadt. Napoleon visited the tomb of Frederick the Great on the anniversary of the day on which, on the same spot, the King of Prussia had bound himself by solemn oaths to the Emperor Alexander

36. Soon after Napoleon arrived at Berlin he issued the Berlin decree against British commerce, on the 21st November. This decree was soon afterwards met by a retaliatory order in Council on the part of Great Britain, and during the course of 1807, a series of decrees were issued both by England and France, each endeavouring to outdo the other in violence, ferocity, absurdity and illegality, the result of which was, however, to exclude the British flag from every port of Europe, except Sweden. This state of hostility, the avowed object of which was the destruction of British commerce, led to a short supply, and an apprehended scarcity of every article of European production required as raw materials for our manufactures. The natural consequence was a boundless spirit of speculation in these articles; and, under the influence of this speculation, the prices of all the products of Russia, and the East of Europe, rose to double and triple the ordinary figure. At the same period Spain was occupied by the French, and similar speculations tripled and quadrupled the price of Spanish wool. France, too, was supreme in Italy; and the produce of that country, chiefly consisting in silk, rose in a similar proportion. Nor had our own conduct been less ruinous in other respects. The vindictive nature of the orders in Council had proved so destructive to the rights of neutrals, that a rupture with America was imminent, which

produced an equally speculative rise in the prices of American products, such as tobacco and cotton

37. Speculation in these productions was favoured by an expected narrowing of the sources of supply; circumstances of an opposite nature came to excite still further perturbations in the usual course of trade. The entry of the French into Spain and Portugal had paralysed their power over their colonies, and the Great South American continent became from this time virtually independent. It had been hitherto rigidly closed against British commerce. On the 13th November, 1807, Napoleon published a decree in the *Moniteur*, deposing the House of Braganza from the throne of Portugal, and Junot took possession of Lisbon, and the Royal Family immediately embarked for the Brazils. These events opened up the whole of the South American trade to the British, and the speculation of the merchants swelled in a proportion commensurate to the vastness of the markets that were thrown open to them. A complete phrenzy of speculation seized upon the nation. It spread from commerce to joint stock companies. The infatuation of 1720 was reproduced. Joint stock companies of all descriptions, for canals, bridges, insurances, breweries, and multitudes of others, started up like mushrooms. At the same time, the Bank of England fanned the flame of speculation to an extent far beyond the bounds of ordinary rashness. It is stated by Sir Francis Baring, in his evidence before the Bullion Committee, that since the restriction he knew of many instances of clerks not worth £100, who had started as merchants, and had been allowed to have discount accounts of from £5,000 to £10,000, which demand, he said, was caused by the Bank, and not by the regular demands of trade, and which could not exist if the restriction were removed. The paper discounted by the Bank, which had been £2,946,500 in 1795, rose to £15,475,700 in 1809, and to £20,070,600 in 1810

38. Along with this extravagant speculation, partly caused by it, and partly fanning it, a multitude of country banks started up in all directions, and inundated the country with their notes, exactly as had happened before 1793. In the year 1797, they had been reduced to 270; in 1808, they had increased to 600;

and in 1810, when the Bullion Committee was appointed, they amounted to 721, and the quantity of paper they had put into circulation was supposed to amount to £30,000,000. At the same time, the Bank of England had increased its issues to £21,000,000, a quantity declared by some of the most eminent witnesses far to exceed the legitimate wants of the country

39. Concurrently with these extravagant speculations and issues of notes, the price of gold bullion rose rapidly, and the Foreign Exchanges fell with equal rapidity, exactly the same symptoms as had been manifested in Ireland in 1804. The following figures, taken at intervals, are sufficient to shew the rapid rise of the price of bullion and the fall in the Foreign Exchange:—

	Price of Standard Gold.	Price of Silver.	Exchange with Hamburg.
	£ s. d.	s. d.	s. d.
Jan. 1805	... 4 0 0	5 4	35 6
Oct. 1805	... 4 0 0	5 5	33 9
July 1808	... no quotation	5 3	34 9
Feb. 1809	... 4 10 0	5 3	31 0
May 1809	... 4 11 0	5 5	29 6
Jan. 1810	... no quotation	5 7	28 6

40. Under these circumstances, Mr. Horner, on the 1st February, 1810, moved for several accounts relating to Currency and Exchanges. Mr. Baring stated that guineas then brought 26*s.* or 27*s.* The Bullion Committee were then appointed

41. Before proceeding to analyse this famous Report and the evidence produced before it, we may observe that what has so frequently happened when two or more persons or occurrences have contributed to any result, if one of these persons or occurrences has been much more prominent than the rest, the others come, in course of time, to be forgotten, and the whole merit or blame is attributed to the one which has attracted most public attention. So it has been in this case. The Bullion Report of 1810 has, from various circumstances, attracted so much public attention to itself, as to have thrown completely

into the shade the Report on the Irish Currency of 1804; and that Report seems to have been so soon forgotten, that the directors of the Bank of England in 1810 had little or no knowledge of it. The circumstances, however, of the derangement of the Irish Currency, upon which the Committee of 1804 sat, were precisely identical with those of the English Currency in 1810, which caused the appointment of the English Committee. The same sets of opinions were delivered and adhered to stoutly by the professional witnesses in both cases, and the Report of the Committee in each case was precisely identical; in each case they condemned the doctrines and policy of the Bank directors in the most emphatic manner. The Report of the Committee of 1810 is written in a more methodical and scientific form, and is superior as a literary performance, but the principles adopted and enforced in it are absolutely identical with those of the Committee of 1804

42. It may be interesting to compare the composition of the two Committees, who at different times came to similar conclusions as to the principles that should govern the Bank in its issues during the restriction of cash payments. The Committee of 1810 consisted of Mr. Horner, Mr. Spencer Perceval, Mr. Tierney, Earl Temple, Mr. Brand, Mr. Parnell, Mr. Magens, Mr. Johnstone, Mr. Giddy, Mr. Dickinson, Mr. Thornton, Mr. Sheridan, Mr. Baring, Mr. Manning, Mr. Sharpe, Mr. Grenfell, Mr. Foster, Mr. Thompson, Mr. Irving, Mr. Huskisson, Mr. Abercrombie. On comparing this list with that of the Committee of 1804, it will be seen that there were only two members, Mr. Sheridan and Mr. Foster, who were on both Committees

43. The witnesses examined before both Committees consisted of the same varieties. 1. Bank directors. 2. Private bankers. 3. General merchants. 4. Independent witnesses. On reading over the evidence by these respective sets of witnesses, we find that the opinions given by the English Bank directors and merchants were precisely similar to those of the Irish Bank directors. The directors of both Banks vehemently rupudiated the idea that the Bank paper was depreciated; they equally maintained that it was the price of specie that had *risen;* they

both admitted that, while they were liable to pay their notes in specie, they were obliged to regulate their issues by the Foreign Exchanges and the price of Bullion; they both admitted that since the restriction they had paid no regard to their former rules, and they denied the necessity of so doing. They both denied that the issues of their notes had any effect upon the Exchanges, or were in any way the cause of the high adverse Exchange, and they both denied that a limitation of their issues would have the slightest effect in reducing the Exchange to par. They both maintained that there could be no over-issue of their notes so long as they were confined to the discount of paper of undoubted solidity founded upon real transactions

44. Nothing can be more remarkable than the perfect identity in sentiment in every point of opinion and policy, between these two sets of directors, but we must remark a circumstance that will detract considerably from the weight of their opinion, namely, that they were all *interested* witnesses. In the first place, since the restriction upon paying in specie, and so being relieved of fulfilling their obligations, they had extended their discounts enormously, and their profits upon their extended issues had been proportionate, the dividends to the proprietors had greatly increased; and secondly, they were in the position of semi-defendants; their policy was certainly impugned; the Committee was a species of court of enquiry into their conduct, and it certainly was not likely that they would admit that the principles they were acting upon could be wrong, when they were so very lucrative to the proprietors of the Bank. The same objection of interested testimony equally applies to that of the merchants, for they were interested in obtaining as large an amount of accommodation from the Bank as possible, and a restriction of its issues would have curtailed their operations, speculative or otherwise; consequently their interests were better served by the doctrines and policy of the Bank directors. Both Committees, however, examined witnesses of an independent position, who had no interest one way or the other, and in each case they totally disagreed from the opinions of the Bank directors, and condemned their policy. And in both cases the Committee, having examined all those witnesses of different shades and opposite opinions, presented reports strongly con-

demning the opinions and practice of the directors of each bank, and called upon them to alter their policy: the report, in the Irish case, in language of great severity, that in the English case equally strong in fact, though milder in expression

45. As this division of opinion on these financial questions seems to be as permanent and deep-seated as the divisions on political questions, it may be of advantage to state shortly and precisely the points upon which the respective parties were at issue. The facts, of course, were easily ascertained and agreed upon. They were as follows—

1. That the Mint price of gold bullion, or the legal standard of the coin, was £3 17*s.* 10½*d.* per oz.
2. That the market price of gold bullion was then £4 10*s.* per oz.
3. That the Foreign Exchanges had fallen to an enormous extent; that with Hamburg, 9 per cent.—that with Paris, 14 per cent.
4. That the increase of Bank Notes had been very great during the last few years, and was rapidly augmenting
5. That specie had disappeared from circulation

46. Upon this acknowledged state of facts, the opposite issues maintained by the two parties, were as follows :—

The one party maintained—

I. (*a*) That the Bank Notes were depreciated
   (*b*) That the difference between the Market price and the Mint price of gold bullion, was the measure of the depreciation

II. (*a*) That the extreme limit to which the Foreign Exchanges could, by the nature of things fall, in any case, was defined, and easily ascertained, and consisted of the expense of freight, insurance, and some other minute causes
   (*b*) That, in the then state of the Exchanges there was a very large excess of depression over and above that limit, which was not attributed to any of these causes.
   (*c*) That this residual depression of the Foreign Ex-

changes, and the rise of the Market price above the Mint price, was caused by the excessive issues of Bank Notes in circulation.

III. That a diminution in the quantity of Bank Notes would increase the value of the domestic currency —would cause the Foreign Exchanges to rise to par—and the Market price of gold to fall to the Mint price

IV. That the Directors of the Bank of England ought to follow the same rules in the extent of their issues during the restriction of cash payments, as they were obliged to do before, viz., by regulating them by the Foreign Exchanges. When the Exchanges were favourable, and bullion flowing in, they might enlarge them; when the Exchanges were adverse they must contract them

47. In opposition to these principles, the other party maintained—

I. (*a*) That it was not the Bank notes that were depreciated, but the price of specie that had risen

(*b*) That there was no difference between the price of Bullion, whether paid in Notes or specie

II. That the depression of the Foreign Exchanges was in no way whatever attributable to the depreciation of the Currency, but was entirely caused by the adverse balance of payments to be made by Great Britain, the remittances to the army, the continental measures of Napoleon, and other political measures

III. That no diminution or increase of the issues by the Bank would have any effect whatever upon the Foreign Exchanges, either in raising or depressing them, or on the Market price of Bullion

IV. That since the restriction, there was no necessity for observing the same rules in issuing their Notes by discounts as before, *i.e.*, by observing the course of the Foreign Exchanges, but that

the public demand was the sole criterion, and so long as they adhered to these rules, there could be no over-issue

48. With respect to the first point at issue between the two parties, after the very full explanation of the principles involved in it, given in a previous chapter, we need say very little about it here, as, according to what has already been said, it is quite clear that it certainly was a very fantastic opinion to suppose that gold could rise in comparison to a "promise to pay gold." There was one circumstance, however, different in the cases of England and Ireland. In the latter country, the Bank notes were openly at a discount; there were two prices in every transaction, a money price, and a paper price: and there were specie shops where guineas were openly sold sold for Bank notes and several shillings over. In England this was not the case, partly because Bank of England notes were received at their full nominal value in payment of taxes, but chiefly because it was an indictable offence to sell guineas for more than 21*s*. Shortly before the Bullion Committee was appointed, a man named De Yonge was tried and convicted for the crime of selling guineas for more than 21*s*. This law only applied to heavy guineas. Light guineas, below 5 dwts. 8 grns. might be sold, and were usually sold, for a Bank note and 6*s*. or 7*s*. Considering, therefore, that by law it was a crime to sell guineas of full weight at their Market price, it is clear that the value of guineas was not an open question—they were forcibly depreciated by law, and, consequently, this is no argument for the equality in value between the paper and the coin. If it had not been a criminal offence, there would have been two prices for everything a money price and a paper price

Mr. Merle was asked—

"What is the difference between the Mint price and the Market price of gold per cent.?"

"About fifteen or sixteen"

"When you buy gold you pay for it in Bank paper?"

"Yes"

"The payment being made in Bank paper, the price is £4 10*s*. per ounce?"

"What I have sold for the home trade I had only £4 8*s*. for"

"If you were to pay in guineas, should you get the gold at a cheaper rate?"

"I could not pay in guineas, I cannot get them"

"Supposing you had guineas to give, could not you buy that gold at a cheaper rate than £4 10*s.* an ounce?"

"No, I should not offer a less price, certainly; if I were to buy any quantity of gold and pay for it in guineas, I should offer the same price as in Bank paper"

"When you speak of the Mint Price being £3 17*s.* 10½*d.* an ounce, do you calculate that in gold coin or in Bank paper?"

"We make no difference; and I do not believe there has been any difference in paying in specie or Bank paper"

"Is not the reason why an ounce of gold is worth £3 17*s.* 10½*d.* that as many guineas as weigh an ounce amount to that sum?"

"Yes, if a gentleman came and brought me gold, I should pay him exactly the same, whether I paid him in gold coin or in Bank notes"

"The Mint Price of gold is the price calculated in gold coin?"

"Yes"

And the Market Price of gold is at present calculated by paper?"

"Yes, it is all paid in paper"

Thus we see that nobody bought gold Bullion at the Market Price in gold coin, but only in Bank paper

49. Among the other witnesses who held the opinion that the Bank paper was undepreciated, we may cite that of Mr. Chambers, an eminent merchant, which condenses the whole subject into a single point—

"Have you ever had occasion to consider the effects of an excessive or forced Paper Currency in any country, upon its Foreign Exchanges with other countries?"

"In a small degree, I have"

"What do you conceive the effect of such excess to be upon the Foreign Exchanges?"

"I apprehend the effect on the Exchange would follow the depreciation of a forced Currency"

"What do you say to an excessive Currency, though not forced?"

"I do not conceive the thing possible"

"What do you mean by a forced Paper Currency?"

"A paper that I am obliged to take against my will, for more than its value; it is not forced so long as people take it willingly, which they will naturally do whilst undepreciated"

"May not the quantity of Metallic Currency be increased in proportion to payments which it has to effect, by an increased issue from the mines; and will not that have the effect of raising the money prices of all commodities?"

"I conceive an increase or abundance of silver or gold would have the same effect upon those precious metals, as a glut of any other commodity upon the market"

"And, in the same matter, may not that Paper Currency which continues to preserve its credit unimpeached, and which commercial people are perfectly willing to receive, be so augmented in quantity as to raise the local prices of commodities?"

"I do not conceive that that piece of paper, for which I am obliged to give a valuable article of merchandise, can be increased beyond the want of it; nobody will give a valuable article for a piece of paper that does not want it"

"Have you ever happened to pay any attention to the history of the Paper Currency of Scotland between 30 and 40 years ago, or to that of Ireland about the year 1804?"

"Some years ago I remember reading something about them, but the recollection is rather faint upon my mind"

"Do you call that paper, in your sense of the word forced, a forced Paper Currency, which either by law as it stands, or by the force of public opinion, is not convertible into specie at the option of the holder?"

"If it be convertible into objects of my gratification without depreciation I do not consider it forced"

"At the Mint price of standard gold in this country how much gold does a Bank of England note for £1 represent?"

"Five dwts. three grains"

At the present Market price of standard gold, of £4 12*s.* per ounce, how much gold do you get for a Bank of England note for £1?"

"Four dwts. eight grains"

"Do you consider that a Bank of England note for £1, under

these present circumstances, is exchangeable in gold for what it represents in that metal?"

"I do not conceive gold to be a fairer standard for Bank of England notes than indigo or broadcloth"

(*Question repeated*)

"If it represents twenty shillings of that metal at the coinage price, it is not"

. . . . .

"Will you state to the Committee, in your opinion, to what cause is referable the present unfavourable state of Exchange between England and the continent?"

"To the balance of payments being against this country"

"Can you give cases to illustrate the fact that you have assigned of the balance of payments being against this country?"

"Large British armies upon the continent; slow returns for exports; quick payments for imports; and very large stocks of imported goods now on hand in the country"

"Is there any other cause to which you attribute the present state of Exchange?"

"I know of none other that can affect it, excepting that of a forced depreciated paper"

"Is it your opinion that the Currency of England is depreciated?"

"Certainly not"

50. Upon this, Mr. Huskisson remarks—"In these answers this leading doctrine is manfully and ingeniously asserted, and maintained; and all who stand up for the undepreciated value of Bank paper, however disguised their language, must ultimately come to the same issue." It was, in fact, as the same writer just before states, that these persons had persuaded themselves, and endeavoured to persuade others, that Bank paper is the real and fixed measure of all commodities, and that gold is only one of the articles, of which in common with others, the value is to be ascertained by a reference to this invariable standard and universal equivalent, Bank paper

51. It is certainly amazing to think how persons of ordinary intelligence could seriously make such answers as Mr. Chambers

did, and that these views pervaded the whole of the mercantile evidence adduced, the reply to which is so obvious. A Bank Note was a promise to pay a certain specified weight of *gold* of standard fineness, and it did not profess to represent any amount of indigo or broadcloth whatever. A £1 Bank Note professed to represent 5 dwts. 3 grns. of standard gold and nothing else, and if it was only really equivalent to 4 dwts. 8 grns., those who maintain that it was not depreciated must also assert that 4 dwts. 8 grns is the same thing as 5 dwts. 3 grns. There is no escape from this conclusion. Those who maintained that a £1 Bank Note, which was a promise to pay 5 dwts. 3 grns. of gold was still a "pound" when it was only worth 4 dwts. 8 grns., ought also to have maintained that if the fifth part were to leak out of a pint bottle of wine, it was still a "pint of wine" because it was contained in a pint bottle. In each case the "promise to pay" and the "pint bottle" were only the outward sign of what the contents ought to be; in either case, it was the quantity of the substance, either of gold or wine, they actually did contain, that was their true value

52. Those who maintained that the Bank Note was not depreciated should also have maintained that the worn, the clipped, and degraded coin of William III. was not depreciated, when 6*s.* 3*d.* and 7*s.* only contained as much silver as 5*s.* 2*d.* ought to have done by law; so that 5*s.* 2*d.* was only equal in reality to 4*s.* 1*d.* of the legal standard Currency

53. It must be admitted, however, that there was one argument to show that there was no difference in transactions between specie and paper, for specie had totally disappeared from circulation; it had no existence. The Bank paper and tokens were the sole circulating medium of the country. When people found that they could get no more for their good golden guineas than for the depreciated Bank paper, they hoarded them; they either retained them locked up, or melted them down for exportation, the temptation to perjury being exactly 12*s.* per ounce. The explanation of these phenomena is very simple. When Bank Notes were declared inconvertible, they took rank as a new substantive Currency (being merely representative before), exactly

like silver. Now, the relative value of gold and silver purely depended upon their relative quantities, and when their relative values were fixed by law, if the legal value did not correspond to the market value, we have seen over and over again that the metal which was *undervalued* was driven out of circulation. So, also, when heavy and light coins circulated together, the heavy coins were driven out of circulation because the heavy coins were undervalued, and nobody would give 6 ounces of silver for what they might buy with 5 ounces. It was exactly the same with Bank Notes. They could only preserve their relative value with gold by preserving certain relative proportions in their quantity; as soon as this quantity was exceeded their relative value fell, and as their relative value to guineas was fixed by law, a change in their market value was followed by exactly the same consequences as a difference between the market and legal value of gold and silver. The guineas which were undervalued were driven out of circulation, as always has been done under similar circumstances, and as always will be done to the end of time. Nobody would give 5 dwts. 3 grns. of gold for what they could get for 4 dwts. 8 grns. Thus this iniquitous and ignorant law to force down the value of gnineas, brought its own punishment with it: it destroyed their existence as a circulating medium; but then it became literally true that there was no difference between specie and paper; the power of making an invidious distinction between notes and gold was effectually cured,—*solitudinem faciunt, pacem appellant;* when the inhabitants were massacred, the Russians proclaimed—*l'ordre regne à Varsovie*"

54. With respect to the second issue joined between these parties, the principal places with which London had established Exchanges were Amsterdam, Hamburg, and Paris, in all of which the Currency was metallic. The Committee examined witnesses, who proved that the whole expenses of freight, insurance, war risk, and every other charge, varied from about 4 to 5½ per cent., but beyond these there was a depression of 12 to 14 per cent., totally unaccountable for by any of these causes. If it were true that this difference arose from a demand for gold on the continent, it is quite evident that gold should equally have risen in

the continental markets; but those who alleged this cause should have been prepared with a proof of their assertions, which, however, they were totally unable to produce. On the contrary, it was proved that there was no alteration in the Mint price of gold in foreign places, and that the Market price had experienced no rise at all in proportion to the rise in England

55. While the English merchants so strenuously maintained that the Rate of Exchange was entirely due to the balance of payments being against England, and that the Bank paper was not depreciated, it may be as well to compare the opinions of a foreign merchant, who looked at the same circumstances from a different point of view. After stating the difficulty of ascertaining the exact par of Exchange between London and Hamburg, from the fact of one Currency being silver and the other gold, he considered that the Rate of Exchange might be considered as 15 per cent. against England

"Has not a large quantity of circulating specie a powerful tendency to steady the course of Exchange?"

"Yes, certainly, when its importation and exportation is not prohibited, and as forming the only basis that regulated the par of Exchange"

"Is not, then, any country whose chief circulation is in paper, likely to experience great fluctuations in the course of Exchange with other nations?"

"When that paper is not convertible into cash, it only represents, in my opinion, an ideal and not a real value, subject to public opinion, and, consequently, liable to the very great fluctuations which public opinions are subject to"

"Is there not an agio (or premium) at Hamburg, for banco above the current money?"

"Not according to my ideas; but, on the contrary; it is *the different current coins that bear an inferior value* to the Bank money, and which vary daily, every thing there being valued according to Bank money, or a certain weight of fine silver"

"What is the extent to which you conceive that the Exchange is capable of falling in any country in Europe at the present time, supposing it to be computed in coin of a definite value, or

in something convertible into a definite quantity of gold or silver bullion ?"

"The charge of transporting it, together with an adequate profit in proportion to the risk the transmitting such specie is liable to, would be the extent of the fluctuation"

The witness stated that the whole of these causes put together might amount to 5½ or 6 per cent.

"Do you then conceive that such a fall of our Exchange as has exceeded the sum necessary to compensate for the expense of transporting gold or silver, in the last 15 months, must be referred to the circumstance of the existence of a Paper Currency not convertible into specie ?"

"Yes, certainly"

"Do you conceive, then, that out of the 15 or 20 per cent. which the English Exchange has fallen in the last 15 months, the large portion of from 10 to 12, or 13 per cent. may be referable to the circumstance of our Paper Currency not being convertible to cash ?"

"I am clearly of that opinion"

"Do you then consider our paper as depreciated 10 to 13 per cent. in consequence of its non-convertibility into cash ?"

"As I value everything by bullion, I conceive the Paper Currency of this country to be depreciated to the full extent of the 15 or 20 per cent., or rather the difference in this country between the price of bullion and the rate by which the coin is issued from the Mint"

"Do you conceive the balance of trade with the continent of Europe to be now for or against this country ?"

"I conceive it to be considerably in favour of this country, though not to the extent as generally stated in figures; those figures representing, in my mind, only about 80 per cent. of their nominal value"

56. With respect to the third issue between the parties, nothing can be clearer than that a diminution in the quantity of paper in circulation must have enhanced its value relatively to all other commodities, including gold; and as the Market price of gold was determined solely with reference to the price paid for it in Bank paper, and not in guineas, it is evident that

a reduction of the quantity of paper must have reduced the price of gold when expressed in paper, and brought the real value of the note nearer to its nominal value; and by thus raising the value of the whole Currency, it must necessarily have raised the Foreign Exchanges to par, if the diminution was carried to a sufficient extent, and so would have brought gold back again into circulation

57. The fourth issue between these parties contains a perfectly new theory of the Paper Currency, which had previously been announced by the directors of the Bank of Ireland. As this may be considered as one of the most famous theories of Currency, we think it will be advantageous to defer the discussion of it till the chapter in which we shall consider several theories of the subject together. It is sufficient to say here that the Bullion Report especially condemns it

58. The above may be considered as the chief points agitated before the Committee, which are material to our subject. We may now give a short abstract of the arguments and recommendations of the Report. It begins by stating the existing difference between the Market and the Mint price of gold. The former being about £4 10*s*., being 15½ per cent. above the latter. The same difference prevailed in the price of silver. The Foreign Exchanges had also begun to be extremely unfavourable to England in 1808, and had become more so during 1809: at that time the Exchange with Hamburg was 9 per cent. below par; with Amsterdam 7 per cent. below par; and with Paris 14 per cent. below par. So extraordinary a rise in the Market price of gold above the Mint price, coupled with the extraordinary depression of the Foreign Exchanges, had early convinced the Committee that the cause of them was to be found in the state of our domestic Currency. But upon both those points they had been anxious to collect the opinions of merchants

59. Most of the witnesses attributed the high price of gold entirely to an alleged scarcity, arising from the unusual continental demand for it, but it was proved that at Hamburg during the preceding year when the price rose so high in this

country, the fluctuations had never exceeded 3 or 4 per cent. At Hamburg the price of gold was expressed in *silver* like any other commodity, and the Committee considered the change in the Market and Mint price of gold at Hamburg and Amsterdam in the last few years, to shew that a change had taken place in the relative value of the two metals all over the world. Silver having fallen in its relative value to gold all over the world, gold has appeared to rise in price in those markets where silver is the legal measure, and silver to fall in those markets where gold is the legal measure

60. With respect to the demand on the continent causing the rise in the Market price, the same effect ought to have been observed in former wars if that had been the case. But it had not been so during the seven years' war, and in the American war there had been no want of bullion in the country. The two most remarkable times when the Market price had exceeded the Mint price, were in King William's reign, when the silver coin was very much below the standard, and in the beginning of George III.'s reign, when the gold coin was in a very degraded state. In both cases the reformation of the coinage had effectually lowered the Market to the Mint price, and since 1773, when the gold coinage was reformed, till 1797, the Market price had never materially risen above the Mint price; even in 1796 and 1797, when there was such a scarcity of gold, on account of the demand of country bankers to meet the run upon them. The Committee, moreover, totally disbelieved the fact of the alleged scarcity of gold, and witnesses had proved that there was no difficulty at all in getting any quantity of it, by those who chose to pay the price of it, and that the changes which had lately taken place in commercial matters, had caused immense quantities both of gold and silver to be imported into this country. There was, therefore, not only no evidence of the alleged scarcity, but, on the contrary, the evidence proved the opposite fact

61. But even, had there been a scarcity, the idea that the Market price could rise above the Mint price, arose from a misconception. That gold was in this country the measure of all

exchangeable value both by custom and law. That commodities were said to be dear or cheap, according as they exchanged for more or less gold; *but that a given quantity of gold could never exchange for a greater or less quantity of gold of the same standard fineness*, except by a very small quantity, which was the measure of the convenience of having it in coin rather than in bullion, or the reverse. An ounce of standard gold, then, could never fetch more in the market than £3 17*s.* 10½*d.*, *unless* £3 17*s.* 10½*d. in our Currency contained less than an ounce of gold.* That if gold became exceedingly scarce it would become more valuable, compared to other commodities, whose prices would consequently *fall*, while the money price of gold must necessarily remain unaltered, but that was not the case at present, the prices of all commodities had *risen*, and the price of gold had also risen, which facts could only be accounted for by the state of the Currency

62. The Report, then, explains the circumstances which might cause a difference between the Market and the Mint price of gold, the deterioration of the coinage, the delay in having bullion coined, the obstruction to exportation,—these two latter causes amounted to about 5½ per cent. None of these causes existed at Hamburg with respect to silver. The Currency was a regular fixed weight of silver, of standard fineness, and no obstruction was offered to the utmost freedom of exportation. And in England, the variation had never exceeded 5½ per cent., while the Bank paid in gold, and the coin was of full weight

63. Since the suspension of cash payments, however, gold, in a manner, had ceased to be the measure of value, nor was there any other standard of prices than that circulating medium, issued partly by the Bank of England, and secondly, by the country banks, the variations in value of which were only proportionate to their quantity. That it was highly desirable that the value of this circulating medium should be brought to a conformity with its real and legal standard, gold bullion

64. If the gold coin of the country were to become much lessened in weight, or debased in the standard, the Market price

would evidently rise in like proportion above the Mint price; for the Mint price is the sum in coin, which is equivalent in value to a given quantity, say an ounce, of the metal in bullion, and if the intrinsic value of that sum in coin be lessened, it is equivalent to a less quantity of bullion than before. The same effects would follow, if a Paper Currency, no longer convertible into gold, were issued in excess. For that excess, not being exportable to other countries, or convertible into specie, remains in the channel of circulation, and is gradually absorbed by the increasing prices of all commodities, which will rise exactly in the same manner as they rose when the great increase of the precious metals took place. Consequently the prices of all commodities, bullion included, must rise, and, if this fall in the value of the Currency of one country takes place without a corresponding fall in the value of neighbouring countries, their Currencies will no longer retain the same relative value, and, consequently, the Exchanges will fall to the disadvantage of that particular country. Such must be the effects in any country of an excessive quantity of Currency which is not exportable, and which is not convertible into coin which is exportable

65. The difference of Exchange between any two places, arising from the state of trade, and payments between them, could never permanently exceed the expense of conveying and insuring the precious metals from one to the other. The position was so plainly true, and agreed upon by all practical authorities, both commercial and political, as to be perfectly indisputable. That in time of war the risk would, of course, be increased; but, taking into consideration all these circumstances, the entire expenses of sending bullion to Holland did not exceed 7 per cent., and to Paris a little more; these causes might, therefore depress the Exchange to that extent, but no lower. But the depression had lately amounted to nearly 20 per cent.; consequently, after exhausting all these causes of depression, there remained a large residual depression to be accounted for; and that **residual depression could only be accounted for and was owing to the depreciated state of the domestic Currency**

66. The great general result, then, of all these foregoing principles and facts was, that in the then artificial state of the Currency, it was a point of the greatest importance to watch the Foreign Exchanges and the Market price of gold bullion, and the Committee were anxious to know if the Directors of the Bank of England regarded the matter in the same light, and whether the great disturbance in the price of gold and the Foreign Exchanges, during the last year, had made them suspect that the Currency was excessive. The directors, however, totally repudiated those notions and ideas; they maintained that their issues and the Foreign Exchanges and price of gold had no connection whatever with each other, and that, in making their issues, they never paid the slightest regard to either one or the other, and that no modification of their Paper Currency would influence either the price of gold or the Foreign Exchanges

67. The report then proceeds to disprove the opinions of the Bank by historical references. They quoted the cases of the derangement of the Scotch currency in 1763, of the Irish currency in 1804, both of which are fully detailed in this work; they then quoted the case of the Bank of England in 1696-97, which has been described with much minuteness in the preceding chapter, where the extract from this Report has already been quoted and commented upon. But, though we have been obliged to point out the grievous chronological errors with which it abounds, it is remarkable that the correction of these errors does not in any way weaken or contradict the arguments of the Bullion Report; on the contrary, the true state of the case materially strengthens and adds force to all the principles of the Report

68. In former times, a high price of bullion, and an adverse state of the Exchanges, had compelled the Directors of the Bank to reduce their issues, to counteract the drain of guineas, and preserve their own safety. They, perhaps, did not understand the principles of the case better than the Directors of the then time, but they felt the practical inconvenience, and were obliged instinctively to obey its impulse, which circumstance imposed a practical limit upon their issues. But, since the restriction, they did not feel the inconvenience, and that check had been removed;

nevertheless, it was the clear and decided opinion of the committee, that the Bank ought to continue to regulate their issues by the Market price of bullion and the Foreign Exchanges, in the same manner as they had been obliged to do before the suspension, and that the high price of gold bullion, and the depression of the Foreign Exchanges beyond the limits before described, were to be ascribed to the neglect of the due limitation of the Paper Currency

69. Since the checks above described had been removed, the Committee were anxious to know upon what principles the Directors had regulated their issues. The Directors and some of the merchants shewed a great anxiety to state a doctrine, of whose truth they were thoroughly convinced, that there could be no possible excess in the issue of Bank of England paper, so long as the advances in which it is issued consist of the discount of mercantile bills of undoubted solidity, arising out of real commercial transactions, and payable at short and fixed periods. These were the principles which then governed the Bank, and what they said indicated the only true limit that need be imposed on their issues. Nevertheless, the Report says such a doctrine is wholly erroneous in principle, and pregnant with dangerous consequences. The Report then proceeds to shew the fallacy of this theory of Paper Currency, which, as we have already observed, we shall reserve for future consideration, along with several other theories upon the subject

70. The limitation of the rate of interest by law to 5 per cent. produced injurious effects, by fanning a spirit of speculation, and making more extensive demands for discounts. Consequently, the Directors themselves had been obliged frequently to limit their advances, and did not act up to their own principles, which they considered sound and safe, and, consequently, they had no distinct or certain rule to guide them

71. The suspension of cash payments had thrown into the hands of the Directors of the Bank the important charge of supplying the circulating medium of the country at their sole discretion. That the most complete knowledge of the state

of trade, combined with the most profound science in all the principles of Money and Currency, could not enable any set of men always to adjust the circulating medium properly to the trade of the country. That the precious metals were the only natural adjusters of these things, which could not be replaced by any human wisdom or skill. That the Directors of the Bank had exercised the new and extraordinary discretionary powers entrusted to them, with great integrity and regard to the public interests, according to their conception of it, and with more forbearance than might have been expected; but, unfortunately, the principles upon which they acted, were fundamentally erroneous, and they had been in a great measure the cause of the continuance of the great disturbance in the monetary system

72. The Report then gave some statistics regarding the quantity of notes in circulation at different periods since the restriction. However, they said that the actual numerical amount of notes in circulation at any given time was no criterion whatever, as to whether it was excessive or not. Different states of trade, and different extents of commercial operations, would require different amounts of notes. When public credit was good, a smaller amount would be required than when public alarm was felt, and people had recourse to hoarding. Moreover, the different methods of doing business, and economising the use of the Currency, much influenced the amount which might be proper and necessary at any period. The improved methods of business, the policy of the Bank, the increased issues of country bankers, had all tended to diminish the quantity of Bank Notes necessary for commerce. Consequently, the numerical amount alone was no criterion whatever; a surer test must be applied, and that sure criterion was only to be found in the state of the Exchanges, and the price of Gold Bullion

73. The experience of the crisis of 1793 had proved that an enlarged accommodation was the true remedy for the failure of confidence in country districts, such as the system of Paper Credit was occasionally exposed to. That it was true that the Bank had refused the enlarged accommodation in 1793. But the issue of Exchequer Bills was exactly the same in principle, and

the good effects that followed that issue proved the truth of the principle, that if the Bank had had the courage to extend its accommodation in 1797, instead of contracting it as they did, the catastrophe which followed might probably have been avoided. Some persons thought so at that time, and many of the Directors, since the experience of 1797, were now quite satisfied that the course adopted by the Bank in that year increased the public distress, in which opinion the Committee fully concurred

74. A very important distinction, however, was to be observed between a demand for gold for domestic purposes, sometimes great and sudden, and caused by a temporary failure of confidence, and a drain arising from the unfavourable state of the Foreign Exchanges, *that a judicious increase of accommodation was the proper remedy for the former phenomenon, but a diminution of its issues the correct course to adopt in the latter*

75. That the present issues were excessive, but that it was essential to the commercial interests of the country, and to the general fulfilment of mercantile engagements contracted during the too free issue of paper, that the reduction should be made gradually and with great caution and discretion. They then give some details of the great increase of country Bank Notes, and the facilities of abuse and excessive issues afforded by the then state of the Law respecting them

76. Upon all those facts and reasonings, then, the general conclusions arrived at were: That at that time there was an excessive Paper Currency, of which the most unequivocal symptom was the very high price of gold bullion, and next to that the very depressed state of the Foreign Exchanges. That the excess was to be attributed to the removal of all control on the issues of the Bank of England by the suspension of cash payments. It was greatly to be regretted, therefore, that this Act, which at best was only intended to be temporary, has been continued as a permanent war measure. The enormous evils and injury to all classes of the community by the great derangement of the measure of value, were too notorious to be necessary to describe, and there was every prospect of their continuing and increasing: that the integrity

and honour of Parliament imperatively required that an end should be put to this state of things at the earliest practicable moment

77. That the continuance of this state of matters held out a temptation to Parliament, to have recourse to a depreciation of the gold coin, by an alteration of the standard, which had been done by many Governments under similar circumstances, and which might be the easiest remedy to the evil. But it would be a great breach of public faith and of the primary duty of Government, to prefer the reduction of the coin down to the paper, rather than the restoration of the paper to the legal standard of the coin

78. Some proposals had been made of remedying the evil, by a compulsory limitation of the amount of the Bank's advances or discounts, or of its profits or dividends. All these, however, were futile, because the necessary proportions never could be fixed, and even if it were so, might very much aggravate the inconveniences of a temporary pressure, and even if their efficacy could be made to appear, they would be most hurtful and improper interferences with the rights of commercial property

79. The only true and proper remedy for all these evils was therefore, **a resumption of cash payments.** That, however, was an operation of the greatest delicacy, and it must be left entirely to the discretion and prudence of the Bank to carry it into effect. Parliament should merely fix the time, and leave it to them to carry out the details. Under all the circumstances, a period of two years seemed to be not longer than necessary, and at the same time sufficient to enable them to prepare for it. The Committee finally concluded by recommending an Act to be passed to compel the resumption of cash payments in two years from that time

80. Such, we trust, is a fair analysis of this famous Report, which has acquired a celebrity probably exceeding any report that has ever been presented to Parliament. It contains the eternal and immutable principles which must regulate every Paper Currency which makes any attempt to conform to the value of the gold it represents, and if any legislation on Paper

Currency be considered necessary, it must endeavour to enforce the practical application of the principles of this Report, and just in so far as it deviates from or contravenes them, so it will be found to thwart and contravene the eternal principles of Economics. All legislation, then, on the Currency should have as its object merely to provide the best machinery for ensuring the practical application of these principles. The general principles laid down in this Report are as complete a matter of demonstration as any in Euclid; the method of treating the subject is as scientific as any of the great discoveries in natural philosophy, which have excited the admiration of the world, nor could it fail to carry conviction to any one of ordinary intelligence who was capable of understanding the force of the arguments. No sooner, however, was it published, than it was assailed by a whole multitude of pamphleteers, whose obscure memory it is not worth while to revive now. The interests affected by the Report were too deep and extensive for it not to be attacked by every species of ridicule and acrimonious controversy. We must now advert to its reception and treatment in the House of Commons

81. The Report was presented by Mr. Horner on the 9th June, 1810, but was not formally taken into consideration till the 6th May, 1811. It was the joint composition of Mr. Horner, Mr. Huskisson, and Mr. Henry Thornton. The debate was opened by Mr. Horner, who addressed the house for upwards of three hours in a speech which obtained the admiration of all who heard it. It is unnecessary to go over that speech here, because its line of argument has already been anticipated. He ended by moving a series of sixteen resolutions. The first seven related to the legal standard of value in this country, with reference to which all contracts were made in this country. 8. That the promissory notes of the Bank were stipulations to pay on demand the number of pounds sterling specified upon them. 9. That when Parliament passed the Restriction Act it had no intention that the value of these notes should be altered. 10. That, nevertheless, they had for a considerable time been below their legal value, (11) which was caused by the excessive issues of them, both by the Bank of England and the country banks. 12, 13. That the extraordinary depression of the Foreign

Exchanges was in great part owing to the depreciation of the Currency of this country, relatively to that of other countries. 14. That during the suspension, the Directors of the Bank ought to regulate their issues by the price of bullion and the Foreign Exchanges. 15. That the only method of preserving the Paper Currency at its proper value was to make it payable on demand in the legal coin of the realm. 16. That cash payments ought to be resumed at the period of two years from that time

82. Mr. Rose replied to Mr. Horner—"He said that he could shew that there was no depreciation of Bank Paper from excessive issue, and that the Report was more full of errors and misstatements than any that had ever been made to Parliament. He was convinced that the issue of Bank Notes could have no effect on the price of gold, or on the Foreign Exchanges. He denied that the increased price of commodities was in any way to be attributed to the increase of Bank Paper. The Report of the Committee was directly in opposition to the opinions of all the witnesses examined, except two. All "experience" was against the "reasonings" of the Report. He produced a table shewing the number of Bank Notes in circulation at different periods, and the Market price of bullion and the Exchange with Hamburg, to shew that there was no connection whatever between them. However the Committee had themselves most pointedly remarked that the numerical amount of Notes alone was no test of their depreciation. The enormous payments which England made to the continent during the last two years were quite sufficient to account for the fall in the Exchange. That the rise in the prices of all commodities on the continent had been equally great in countries where there was no Paper Currency as here. He went into arguments at great length to disprove the idea that the issue of Bank Notes had any effect on the price of gold or the Exchanges

83. Mr. Henry Thornton stated that the great question at issue between the Bullion Committee and the Bank was, whether its issues should be regulated by the price of gold and the Foreign Exchanges, and if its excessive issues produced any effect upon them. Mr. Thornton argued at great length in support

of the principles of the Report, and cited the case of the Bank of France in 1805 as a remarkable confirmation of the truth of its principles. The French Government, having occasion for a loan, applied to the merchants for it, such a transaction being contrary to the rules of the Bank. The merchants proceeded to fabricate among themselves bills to the requisite amount, which they discounted at the Bank, which thus ultimately became the real lender. There was, in consequence, an enormous increase of the Bank paper, a great demand for specie. The Bank had to bring back specie from the provinces at a great loss—at length it stopped payment. Bank Notes fell to a discount of 10 or 12 per cent., and the Foreign Exchanges fell 10 per cent. But the Bank reduced its paper, and in three months resumed payment without difficulty, and the Foreign Exchanges were rectified. Mr. Thornton also quoted several other cases of other countries where the same phenomenon had occurred. He then passed on to the question of the standard of the Currency, which he said was becoming endangered by this continued depreciation. Indeed, the argument in favour of a deterioration of the coin grew stronger every day. The very argument of justice, after a certain time, passes over to the side of deterioration. If we have been only two or three years using a depreciated paper, justice is on the side of the former standard; if ten or twenty years have passed since paper fell, it may be deemed unfair to restore the ancient standard. He concluded by strongly urging Parliament to return to the ancient standard before it was too late

84. Mr. Vansittart, who moved the counter-resolutions to Mr. Horner, controverted, at great length, the principles of the Report. He asserted that the only mode in which a Metallic Currency could have a favourable effect on the Exchanges was by *exportation*, and that if exportation was prohibited by law, no effect could be produced. The amazing absurdity of this assertion has been sufficiently proved in the course of this work to need no repetition here. These assertions, however, were sober good sense compared to the lengths of wild extravagance into which he subsequently plunged. He said that the first seven resolutions argued on the supposition that the standard was something visible and tangible. "I affirm that a standard, in the sense used by

these gentlemen, namely, a fixed and invariable *weight* of the precious metals as a measure of value never existed in this country!!" He ridiculed the idea of the resolution that the weight at which any such money is authorised to pass current is fixed!! These extraordinary ideas he attempted to support by reference to the degraded state the coin had been in at different periods, but which were yet legal tender, and which, he contended, proved that the coin was not any definite weight of bullion. It was upon this point, he said, that the question of depreciation depended. "Now, I do not consider myself bound either to admit or deny that Bank Notes have lost a value which they never possessed, and which the legal coin of the country never possessed, namely, a value estimated by a fixed weight of gold or silver bullion. They never had any other than current value, founded on the public confidence in the Bank, and this value, I firmly believe, and have distinctly stated in my third proposition, that they possess as much as ever." When the whole of the rest of his speech was a mere repetition and development of such crazy ideas, it is mere waste of time to give any more details of it. There is one more specimen, however, which we cannot refrain from extracting. He says—"It appears, then, that a diminution of the value of Currency may have the effect of improving the Exchange, but cannot by possibility depress it!!" Which means that the more debased and worthless the Currency of a country is, the more favourable should be the Foreign Exchanges, or the higher should foreigners estimate it. So that, while the French assignats were daily falling lower and lower at home, the more should foreigners have given for them: so that, while the French themselves gave one livre in coin for 1,200 in assignats, the English and other foreigners ought to have given their full nominal value in coin, and even more than that according to Mr. Vansittart. He then made several triumphant observations about there being no difference in transactions between Bank Notes and coin. He admitted that he had been a member of the Irish Committee of 1804, and had concurred in the opinion that Irish Bank Notes were depreciated, but he said that the two cases were not parallel; for it appeared not only that the current coin was openly sold at a premium, but that an established difference of price existed between payments

in coin and in Irish paper, while Bank of England paper passed as equivalent to guineas. This depreciation, however, he denied had proceeded from excessive issues, but from the political circumstances of the period

85. Such were the leading arguments against the conclusions of the Committee, which, though somewhat varied in expression, were constantly repeated. After the exposition given in our chapter on the Coinage, it would be waste of time to attempt seriously to disprove the outrageous folly of the proposition, that the coins of Great Britain never were intended to contain any fixed or certain quantity of gold or silver bullion in them. If this had been true, what was the need of having any gold or silver in them at all; if it was not to regulate their value?

86. With respect to the assertion that there was no difference in common payments between guineas and Bank Notes, and that guineas were not openly selling at a premium, as in Ireland, the answer was simple and decisive: if it were so, it was merely through the terrors of the penal law. At the very time of this debate three men were lying under a conviction of the crime of selling guineas for more than 21*s*. They had been convicted under an old statute of Edward VI., which did not extend to Ireland, so that the reason why guineas were sold publicly at a premium in Ireland was, that there was no law against it; in England it was a criminal offence, and, in consequence of this, guineas had disappeared from circulation. But Mr. Vansittart threw out another challenge: he acknowledged that it was legal for tradesmen to make a distinction in prices, according as they were paid in money, or in Bank Notes, and he denied that such a distinction existed. On this point, however, he was met with a distinct denial by Mr. Huskisson, who said—"If paper were sustained at all in public estimation, it must be by a support growing out of terror, by an estimation proceeding at that moment from a consideration of a pending judgment. If this were once settled, public estimation would soon shew what it really was. In every part of the country there were already two prices; he had undoubted proof of the fact. He had in his

pocket a letter from a person intimately acquainted with such matters, which said that two prices were prevalent in the country, and that the usual premium for guineas was half-a-crown "

87. Mr. Sharp, a member of the Bullion Committee, adduced further facts to prove that the Bank Notes were depreciated; he said it had been usual to send over specie to Guernsey to pay the troops there. *Each guinea had lately been paid to the soldiers at* 23*s.*; one regiment, however, had refused to receive them at that rate. In another case he knew of a person who had received a legacy of 1,000 guineas which was paid in specie; he went to invest it in the funds, and, on asking the price of the 3 per cents., was told 64½. But, on asking what the price would be if paid in real money, he was told, after some consideration, he might have it at 60, which was the price actually paid. So that, while the Government were arguing at Westminster that guineas were of the same value as Bank Notes, they were at the same time dishonest enough to pay them away to the soldiers at 23*s.*

88. Sir Francis Burdett stated that, in Jersey, Bank of England Notes were at a discount of 3 per cent. as compared to the notes of their own little bank; that it was perfectly notorious that two prices were common throughout the country. He knew it from his own experience; he had been offered wine at far different prices, according as he should pay for it either in Bank Notes or in specie

89. We have now given so much space to this interesting discussion, that we can scarcely afford room to notice any of the other speeches upon the subject. When we read the arguments and evidence, which seem to be so perfectly satisfactory, according to all the usual principles that command assent, we feel some curiosity to know what was the opposing theory set up against them, and it was simply this, that the pound sterling was nothing tangible at all! It was an imaginary vision! a vague idea! an airy nothing! which never had any existence in nature at all, and that, accordingly, everything, money and bullion included, might vary in endless changes round this ideal centre. It had even less substantiality than a whiff of smoke! It was "a sense of value"

communicated in some mysterious way from one person to another. Mr. Canning pursued the author of this insensate folly with unsparing ridicule in his speech. He also ably pointed out the consequence of not allowing guineas to circulate at their market value, which had been followed by their total disappearance, whereas dollars, which were beginning to disappear when they were bound down to the value of the depreciated Bank paper, were immediately restored to circulation when they were allowed to pass current at their real value. However, though he fully agreed in all the principles and reasonings of the Bullion Report, he did not think it expedient that the Bank should be called upon to resume cash payments in so short a period as two years

90. After a debate of four nights the Committee divided on the first of Mr. Horner's resolutions, and it was negatived by a majority of 151 to 75. The fourteen next were negatived without a division, and the last was rejected by a majority of 180 to 45. Among the names of the majority was that of **Robert Peel**

91. The Ministry, having defeated the Bullion Committee by so great a majority, would have done well to let the matter rest. As to the matter of fact agitated between the parties, the depreciation or the non-depreciation of the Bank Notes, it would be useless to waste one word more, and in arguing against so palpable a fact, the ministerial party shewed little discretion. They might easily have saved their credit by admitting the fact, but arguing that it was not expedient for the public service that so momentous a change should be made during the war. Not content, however, with procuring the total rejection of Mr. Horner's resolutions, Mr. Vansittart, in the plenitude of his power and party strength, and in the mere wantonness of tyranny, determined to drag the House through the lowest depths of ridicule and absurdity. He moved a series of resolutions which are too long to be inserted here, to the effect that there was no legal weight of bullion in the coins, beyond what the caprice of each Sovereign might dictate; that the Bank Notes were merely promises to pay in these coins, and they always had

been, and at that moment were held equivalent in public estimation to the legal coin of the realm, and generally accepted as such in all pecuniary transactions to which such coin is lawfully applicable, and that the price of bullion and the state of the Foreign Exchanges were in no way owing to excessive issues of Bank paper

92. In introducing his resolutions Mr. Vansittart made a speech of enormous length, repeating his former views, that the state of the domestic Currency had no effect upon the Foreign Exchanges, and, with a flight of unheard-of audacity, he, in defiance of the recorded opinion of Parliament and the unanimous testimony of all contemporary writers, made the extraordinary assertion that in 1696 and 1774 "the fall of the Exchange was the cause, and not the consequence of the depreciation of the Currency!" Mr. Canning in vain attempted to persuade the Ministers to rest satisfied with the defeat of the Bullion Committee, and, for the sake of the reputation of the House, not to make them pass a vote which no one outside the House could speak of without laughter. His amendment was rejected by a majority of 82 to 42; and, after some other minor divisions, Mr. Vansittart's resolutions were carried

93. We have observed that guineas were not sold openly at a premium, because it was generally believed to be a criminal offence to do so, and three men were tried and convicted for so doing. To draw any argument of the equality of the value of the note and coin under such circumstances, was nothing but a contemptible piece of sophistry. But nothing could be more whimsical or absurd than the presumed state of the law on the subject. It was held to be penal to part with a Bank Note for less than 20*s.* in bullion, but it was quite legitimate for a tradesman to make two prices for his goods. In his speech against Mr. Horner's resolutions, Mr. Vansittart had taunted his opponents with the circumstance that this was not done. It is incredible how any one could have made an argument of such an absurdity, when it was so easy to outwit the law. If any one wished to avoid the legal offence of parting with a guinea for more than 28*s.*, what more easy than a collusive sale? Sell

a loaf to any man for a £1 note and 5*s.*, and buy it again from him at a guinea, and the interchange between the guinea and the £1 5*s.* was effected in the most legal manner. But such subtleties were at once put an end to by the Court of Common Pleas unanimously quashing the conviction of De Yonge, and declaring that it was no crime at all to sell guineas at a premium

94. After the House had indulged in this wild freak—the very saturnalia of unreason—and given so great an encouragement to the Bank to pursue its wild career, it became evident to any one who understood the subject, that the value of every man's property depended upon the will of the Bank directors. This was fraught with the most alarming consequences to every one who had a fixed annuity, as, while the price of every article of prime necessity kept pace with the depreciation of the currency, any one, like a landlord, having a fixed rent to receive, was paid in a depreciated paper, while his tenants received the increased nominal prices of their commodities. As matters were continually getting worse, gold having risen to £4 16*s.* per ounce in March, Lord King issued a circular to several of his tenants, reminding them that their contract was to pay a certain quantity of the legal coin of the country, and that the present Paper Currency was considerably depreciated. He said that, in future, he should require his rents to be paid in the legal gold coin of the realm, but that, as his object was merely to secure the payment of the real intrinsic value of the sum stipulated by the agreement, he should be willing to receive the amount in Portugal gold coin of an equal weight with that of the stipulated number of guineas, or by an amount of Bank Notes sufficient to purchase the weight of standard gold requisite to discharge the rent

95. That such a demand was legal no one pretended to deny; but when this practical sarcasm was passed upon the resolution of the House of Commons, it drove that party wild, and the most unmeasured abuse was heaped upon him for *incivism*. Not only was this in every way legal, but nothing could have been more equitable. His tenants were receiving the increased market prices for their crops, and only paid him in the

same number of depreciated notes. It is quite clear that, if his tenants got an increase in the price of their corn, owing to the depreciation, he ought to have received a proportionate increase in his rents. Lord Stanhope brought in a bill, which, after being considerably modified, was ultimately passed, making it a misdemeanour to make any difference in payments between guineas and Bank Notes. Lord Stanhope, in bringing in the bill, mentioned several instances which he had been informed of, in which 27*s.* were demanded for a guinea. Lord Holland also said that a pound note and seven shillings were currently given for guineas. Admirable commentary upon the resolutions carried so triumphantly in the House of Commons only two months before, and then standing on their journals, that in public estimation guineas and Bank Notes were equal!

96. Lord Grenville opposed the bill with great earnestness, and his opinion is particularly valuable because he was one of the Cabinet who originally proposed the Restriction Act. He said he had never seen the Ministers of the country in so disgraceful a position as they were that night. He turned the famous resolutions of the House of Commons into great ridicule, and said that it had been left for Robespierre, the Jacobins, and the present Ministry to raise a cry of *incivism* against the private actions of individuals. He said that it was one of the most painful days in his and Mr. Pitt's political life, when they felt compelled to come to Parliament to propose the restriction. "By what consideration we were afterwards induced to extend it for successive short periods, it is unnecessary to explain, suffice it to say, that they are considerations which I shall ever deeply regret had any influence upon my mind. I do assure my noble friend (Lord King) that I have long since fully concurred in the arguments which he has urged against the original policy of that restriction." He said that the present course, if persevered in, must end in the same manner as the Mississippi and South Sea Schemes, in total ruin. "My Lords, it has often been my lot to point out the inevitable results of the issue of assignats in France. How little did I then imagine that, in the description I then gave, I was but anticipating what, in the course of twenty years, would be the faithful picture of my own country!"

97. Although we have given so much space to this debate, we cannot refrain from giving a few sentences of Lord Stanhope's reply, as they concentrate in the shortest space the whole of the ministerial arguments and views on the subject—

"Earl Stanhope, in explanation, said that there was no such thing in this country as a measure of value founded on a quantity of bullion of standard fineness. The legal coin was the money with the stamp upon it. The stamp was what made it the lawful coin, not to be melted nor transported, and not the weight and fineness. He did not know what mathematicians he had to deal with, but if Bank Notes and gold bore a fixed proportional ratio to the pound sterling by law, they were equal to one another, and to prove this he need go no further than the first book of Euclid, where it was laid down as an axiom that things equal to the same are equal to one another"

98. We are accustomed to smile at the famous decree of the Inquisition, which resolved that the motion of the earth was false, and sympathise with Galileo, who, when retiring from their rebuke, said "*e pur si muove*," "it moves for all that." But the famous resolution that guineas were equal in public estimation to Bank Notes, when guineas were currently sold for a £1 note and seven shillings, and the dictum of Lord Stanhope that they *were* equal because the law *declared* them to be so, infinitely transcends it in absurdity; and, when we feel inclined to be merry at the expense of the worthy fathers of the Inquisition, we should think of Mr. Vansittart's resolution, and be grave

99. The Bill was warmly contested in every stage of its progress through the House of Lords, but finally passed the third reading by a majority of 43 to 16. In the House of Commons the debates were equally warm and protracted, but it was finally passed by a majority of 95 to 20. The Act was originally limited to the 24th March, 1812, but it was subsequently continued during the continuance of the Bank Restriction Act

100. We shall reserve some remarks regarding the effects of the great overtrading of 1809 and 1810, till the chapter in

which we shall consider the theory of the Bank respecting the issues of its notes upon mercantile security

101. Among other arguments alleged against the opening of the Bank, was the injustice of compelling it to buy gold at the increased Market price. Now that we are enabled to take a more dispassionate view of the subject than those whose interests were so much involved in it at the time of the debate, we can see that there was no hardship in such a requirement. Every creditor who was paid in these depreciated notes was defrauded of 20 per cent. of his debt, and, considering the enormous gains made by the Bank at the expense of the holders of its notes, justice evidently demanded that the Bank should purchase whatever quantity of gold was sufficient to discharge its obligations, cost what it would. The injury to the holders of its notes, severe as it was, was only temporary, but a very much more serious injury was done to the nation, by adding an enormous amount to the national debt, which was contracted in this depreciated Currency

102. The harvest of 1811 was extremely deficient, and that was the period, too, when the power of Napoleon was at its height, and the continental sources of supply were cut off. Towards the middle of 1811, the price of corn began to rise very rapidly, and continued doing so till August, 1812, when it reached its greatest height during the war. The average of wheat for England and Wales was then 155*s*., and some Dantzic wheat brought 180*s*., and, in one or two instances, oats were sold at 84*s*. The advocates of the rival theories attributed this extraordinary rise to different causes; one party almost entirely to the depreciation of the Paper Currency, the other party almost entirely to the great scarcity. Mr. Tooke is the most distinguished advocate of the latter view, and, in support of it, brings most forcible arguments from the corresponding rise which took place in France during the same period, where the currency was almost purely metallic. Admitting to the full extent the powerful arguments adduced by Mr. Tooke, which derive additional force from his being a contemporary of the circumstances he describes, we can yet hardly think he can be correct in so entirely excluding the effect of the depreciation of the Paper

Currency as he does. We have abundance of evidence that before the Gold Coin and Bank Note Bill, there were very generally two prices in the country, a gold price and a paper price: after that Bill that was abolished, and there was nothing but a paper price, and gold totally disappeared from circulation; but can we doubt that if any price had been paid in gold, there would have been a very great difference between the two, fully as great as before that Act? If, then, it be granted that such would have been the case if payments had been made in gold, it seems to follow that, when prices were paid solely in paper, they must be considered to have been enhanced by just so much as the difference would have been if any payments had been made in gold. There does not appear to be the least reason to suppose that the scarcity was comparatively greater in 1812 than it was in 1800; in fact, the evidence seems to be entirely the other way, that the scarcity and distress was much greater in the former period, yet in 1812, the average rose to 155*s*; in the former it was only 133*s*. Whence this difference? We think the evidence points clearly to the depreciation of the Paper in which payments were reckoned. Now, in May and June, 1812, the price of gold bullion was about £4 18*s*. per ounce, at which the real value of the Note was 15*s*. 11*d*. Now, are we to suppose that the enhancement of prices when paid in paper, which was quite notorious before Lord Stanhope's Bill, was actually annihilated by that Act?

103. The principles of the Bullion Report having been decisively rejected by Parliament, and pronounced to be fallacious, by the resolutions which declared 21 to be equal to 27, the Bank took no measures to bring their Notes to a nearer conformity to their nominal value, and the Market or Paper price continued to rise till, in November, 1813, it stood at £5 10*s*., the greatest height it ever reached. The long continuance of high prices, partly caused by a continued series of deficient harvests, and partly by the depreciation of the Paper in which they were paid, gave rise to the belief that they would continue permanent. Immense speculations began in land-jobbing, vast tracts of waste and fen land were reclaimed. It was at this time that the immense agricultural improvements in Lincolnshire were effected.

Rents in most cases rose to treble what they were in 1792; all the new agricultural engagements entered into at this period were formed on the basis of these extravagant prices; landlords and tenants increased their expenditure in a like proportion, family settlements were made on a commensurate scale. As a natural consequence, country banks greatly multiplied. In 1811 they were 728, in 1813 they had risen to 940, and the amount of their issues were supposed, on the most moderate estimate, to be about £25,000,000. After the disasters of the French in the Russian campaign of 1812, and the Battle of Leipsic, the ports of Russia and Northern Germany were thrown open to British commerce. This naturally gave rise to enormous speculative exports and overtrading

104. The harvest of 1813 was prodigiously abundant, so that the price of corn, which in August, 1812, had been 155*s.*, and had receded gradually from that point, till August, 1813, fell with great rapidity, and in July, 1814, was only 68*s.* The exporting speculations were at their height in the spring of 1814, and the prices of all such commodities rose to a very unusual height, in many cases to double and triple of what they had been before. Every branch of industry was by the preceding causes affected, and the natural and inevitable consequences soon followed: a violent revulsion and general depression of prices of all sorts of property, which entailed such general and universal losses and failures among the agricultural, commercial, manufacturing, mining, shipping, and building interests, as had never before been paralleled. As is always the case, the consequences of the wild speculations and engagements persons had entered into during the continuance of the fever continued to be felt for some years after. The disasters commenced in the Autumn of 1814, continued with increasing severity during 1815, and reached their height in 1816-17. During these years 89 country bankers became bankrupt, and the reduction of the issues of country paper was such, that in 1816 its amount was little more than half what it had been in 1814

105. This general discredit of country bank paper, resembling what had previously occurred in 1793 and 1797, caused

a demand for additional issues from the Bank of England, to help to maintain public credit; and, though this caused an extension of the Bank paper by upwards of three millions, so great was the abstraction of country Bank paper from circulation (to certainly three times the amount of the Bank of England issues), that the value of the whole Currency rapidly rose, so that, while in May, 1815, the Market or Paper price of gold was £5 6*s.*, the Exchange on Hamburg 28·2, and that on Paris 19· in October, 1816, the Paper price of gold had rapidly fallen to £3 18*s.* 6*d.*, the Exchange with Hamburg was 38·, and that on Paris 26·10, and they remained with little variation at these prices till July, 1817

106. Hence, at length, was manifested the most complete triumph of the principles of the Bullion Report. The great plethora of this worthless quantity of Paper Currency being removed, the value of the whole Currency was raised almost to par, so near, in fact, that the smallest care and attention would have brought it quite to par; and if means could have been taken to prevent the growth of the rank luxuriance of country Bank Notes, cash payments would have been resumed at this period with the utmost possible facility, and, as a matter of course, without exciting the least comment

107. We have seen that, on several previous occasions, the Bank had intimated to the Government their perfect readiness and ability to resume payments in cash, but had always been prevented from doing so for political reasons. In 1815, when peace was finally restored, they prepared in good faith to be ready to do so as soon as they should be required, and, during that year and 1816, they accumulated so much treasure that, in November, 1816, they gave notice of their intention to pay all their Notes dated previously to the 1st January, 1812, and in April, 1817, all their Notes dated before 1st January, 1816. When this was done, there was found to be scarcely any demand on them for gold. The nation had got so accustomed to a Paper Currency that they were most unwilling to receive gold for it. Mr. Stuckey, one of the largest bankers in the West of England, said, that during this partial resumption of cash payments it cost him

nearly £100 to remit the surplus coin which accumulated upon him to London, as he could not get rid of it in the country, his customers all preferring his Notes; many persons who had hoarded guineas requested as a favour to have Notes in exchange

108. In March, 1814, the restriction was prolonged to July, 1816. The bill was brought in and passed before the news of Napoleon's quitting Elba had reached England. The Act was scarcely passed when the new war broke out which ended at Waterloo, and the expenses of the campaign made the Ministers dread a monetary crisis, and the restriction was subsequently prolonged till July, 1818

109. The partial resumption of cash payments was attended with perfect success; it caused no very great demand for gold, which continued to accumulate in the Bank till October, 1817, when it reached its maximum, being £11,914,000. In that month the Bank gave notice that it would pay off in cash all the Notes dated before 1st January, 1817, or renew them at the option of the holders. In the course of 1817 a very large amount of foreign loans were contracted for; Prussia, Austria, and other continental States of lesser importance, were endeavouring to replace their depreciated paper by a Metallic Currency, and, as money was abundant in England, a very large portion of these loans was taken up here. The effect of this began to manifest itself in April, 1817, when the Exchanges with Hamburg and Paris began to give way, and the Market price of gold to rise. These phenomena increased gradually throughout 1818, until January, 1819, the price of gold was £4 3*s.*, the Exchange on Hamburg 33·8, and that on Paris 23·50. In July, 1817, the new gold coinage began to be issued from the Mint in large quantities. The consequence was a steady demand for gold set in upon the Bank, and, in pursuance of its notices, the sum of £6,756,000 was drawn out of it in gold. Just at this time the British Government reduced the rate of interest upon Exchequer bills. The much higher rate of interest offered by continental Governments caused a great demand for gold for exportation, and in the beginning of 1818 a very decided drain

set in. The Bank directors, however, determined to set all the principles of the Bullion Report ostentatiously at defiance. While this great drain was going on, they increased their advances to Government from £20,000,000 to £28,000,000, and though they knew perfectly well that the demand of gold was for exportation, they took no measures whatever to reduce their issues for the purpose of checking the export. At the same time the issues of country banks had increased by two-thirds since 1816

110. This demand for gold became more intense during 1818 and 1819, and it became evident that the Bank would soon be exhausted if legislative interference did not take place. Accordingly, on the 3rd February, 1819, both Houses appointed Committees to inquire into the state of the Bank; and, on the 5th April, they reported that it was expedient to pass an Act immediately to restrain the Bank from paying cash in terms of its notices of 1816-17. An Act for that purpose was passed in two days' time. It was stated in the Report of the Commons that in the first six months of 1818, 125 millions of francs had been coined at the French mint, three-fourths of which had been derived from the gold coin of this country. The Act forbade the Bank to make any payments in gold whatever, either for fractional sums under £5, or any of their Notes, during that Session of Parliament. The Act, therefore, totally closed the Bank for payments in cash

111. As we have given the names of the Committees of 1804 and 1810, we subjoin those of the Committees of both Houses in 1819. Those in the Commons were Lord Castlereagh, Mr. Vansittart, Mr. Tierney, Mr. Canning, Mr. Wellesley Pole, Mr. Lamb, Mr. F. Robinson, Mr. Grenfell, Mr. Huskisson, Mr. Abercromby, Mr. Banks, Sir James Mackintosh, Mr. Peel, Sir John Nicoll, Mr. Littleton, Mr. Wilson, Mr. Stuart Wortley, Mr. Manning, Mr. Frankland Lewis, Mr. Ashhurst, Sir John Newport. The Committee of the Lords were the Earl of Harrowby, Duke of Wellington, Marquis of Lansdowne, Duke of Montrose, Earl of Liverpool, Earl of St. Germains, Earl Bathurst, Viscount Sidmouth, Earl of Aberdeen, Earl Granville, Lord King, Lord Grenville, Lord Redesdale, Earl of Lauderdale.

112. The chief points of interest in these reports regarding our present subject are the opinions held by the witnesses respecting the great doctrines of the Bullion Report. The reports of neither House entered into the question of the theory of the Currency: they were confined to recommending a certain course of action; but they examined a number of witnesses of the first eminence on the subject, and the result of their evidence is most extraordinary. It will be remembered that, both in 1804 and 1810, the immense preponderance of commercial testimony was entirely adverse to the doctrine that the issues of Paper Currency had any effect upon the Exchanges, or the price of Bullion, or should be regulated by them. Nevertheless, the reports of both Committees were entirely in the teeth of the mercantile evidence. The Bullion Report had now been before the country for nine years, and had caused more public discussion, both in Parliament and in the press, than almost any subject whatever; and it is perfectly manifest that if its principles were erroneous, the commercial world would only have been further strengthened in their opposition to them. But what was the result now? The overwhelming mass of commercial evidence was entirely in their favour. The current of mercantile opinion was now just as strong on their side as it had formerly been against them. What could be more triumphant than this? What could be more splendid testimony to their accuracy and soundness than the fact that they had converted the immense hostile majority of the commercial world?

113. In order to give some idea of this remarkable change in opinion, we must make some extracts from the evidence of the witnesses

Mr. Dorrein, Governor of the Bank, said to the *Lords' Committee*, p. 31—

"The advances of the Bank to Government upon Exchequer bills cannot be recalled at the pleasure of the Bank. But, when money is lent at short periods, the Bank has a control over an excess of circulation, so as to check any improper speculation, and the means of sending bullion out of the country; and thus the Bank would have an influence over the Foreign Exchanges"

"Are you, then, of opinion that the Exchanges are affected by

the increase or diminution of the number of Bank Notes in circulation?"

"A scarcity of circulating medium, of whatever it may consist, will oblige merchants to draw in their funds from foreign countries, and the superabundance of it will send the precious metals out of the country"

"The consequences of a scarcity of money would be to force an export of merchandise and manufactures, which would render the Exchanges favourable to this country"

(*Before Commons' Committee, p.* 32)

"A lessened circulation will have an effect to render the Exchange favourable?"

"Because it would force an export of merchandise, and an export of merchandise would bring money into the country"

"You have said that a contraction of the issues would lower all prices. Are the Committee not to understand that it must lower the prices of gold and silver, as well as of all other commodities?"

"I apprehend it would"

"Assuming the course of Foreign Exchanges to be 5 per cent. against this country, would not the effect of a diminution in the price of commodities, clearly, consequent on a diminution of issues, be to restore the Exchanges to par?"

"The effect would be to force an export, and thereby raise the Exchange"

114. Mr. Pole, Deputy-Governor to the Bank, said to the *Lords' Committee, p.* 35—

"Whether the gold appearing to vanish, and going out of the country, does not proceed, in your judgment, from the unfavourable state of the Exchanges?"

"Certainly"

"Is it your opinion that the Exchanges are affected by the increase or diminution of the circulation of Bank of England Notes?"

"Inasmuch as in that case the interest of money becomes so reduced in this country as to hold out a beneficial prospect to persons in sending their capital from this country, to be invested in foreign securities, where a larger interest is made, conse-

quently, a debt is created from this country, payable to foreign countries"

(*To Commons' Committee, p.* 35)

"Do you think a considerable reduction in the amount of your paper issues would affect the Exchange?"

"I do"

"Is the answer you have given with respect to the effect upon the Exchange of a reduction of the issues of the Bank founded on observation and experience of particular cases, or the result of reasoning only?"

"Entirely upon reasoning; and my reasons are, that I conceive it would compel persons to withdraw their capital from the continent to this country, on purpose to be able to support their own payments"

115. Mr. Haldimand, a director for ten years, but at that time out by rotation, said to the *Lords' Committee, p.* 40—

"Do you conceive that, by a considerable reduction on the part of the Bank of the amount of its issues, the Bank would be enabled to resume with safety its payments in cash?"

"Most decidedly"

"Are we to understand, then, that, in your judgment, the effect of such a reduction of its issues would be to render the Exchange favourable to this country?"

"I certainly have always considered the amount of the issues of the Bank of England to act as a powerful lever upon all our Foreign Exchanges, so as to regulate their rise and fall"

"I conceive the Exchange to be affected by the aggregate amount of the issues of the country bank, and Bank of England paper"

"You have stated, on a former day, that you always considered the amonnt of issues of Bank Notes to act as a powerful lever upon all Foreign Exchanges, so as to regulate their rise and fall; do you apply this to the price of gold?"

"I do"

"Do you ground this opinion upon reasoning, or upon what you have observed to take place?"

"I have grounded my opinion formerly upon reasoning, and my observation has since justified that opinfon"

The witness produced a report of the Governor of the Bank of France, detailing a commercial crisis, and offering very strong and clear proof that an excess of paper circulation did affect both the Exchanges and the price of bullion

"It appearing from the accounts before us that the Exchanges were very nearly par in the month of September last, and afterwards became more unfavourable than they had been since 1815, to what do you ascribe the great depression which has taken place since that time?"

"It would be difficult to point out the particular circumstances independent of the great principle of the depreciation of our Paper Currency, which affect our Exchanges from time to time. I believe that the investments in foreign stocks did for a moment produce part of that fall, but I should attribute a very small part of it to that cause, and fall back upon my principle of an excess of Currency. I most certainly believe that, had the Bank at that moment been paying its notes in specie, the depression alluded to would not have taken place. I ground my opinion on what I observe to be passing between other countries with regard to their Exchange operations. France has at this minute nearly twenty millions sterling to pay to foreign powers; and although three payments have been already made, and the whole are to be completed within 27 months, no sensible effect has been produced upon its Exchanges with other countries equally paying their notes in specie, such as Holland and Hamburg; nor does it appear that any inconvenient diminution has yet taken, or is contemplaeed to take place in the Metallic Currency of that country. My opinion is, that a very small portion of this large payment will be made in specie or bullion. When a certain amount of the circulating medium has left France, the remainder will rise in value, and goods fall in price, when, consequently, it will become more advantageous to France to remit the remainder in its produce and manufactures from time to time"

(*Before Commons' Committee.*)

"I look upon this forced reduction of the issues of the Bank of England as necessary in order to restore the rest of the paper in circulation to its ancient value in gold, and the Exchanges to par. I have no hesitation in stating it to be my decided opinion that the Exchanges would be restored to par immediately the

Bank resumed its payments. I think the depressed state of the Exchanges arises entirely from the excessive issue of Bank of England Notes. I have never heard of any country not paying its paper in specie on demand where such paper has not been depreciated"

"You are understood to say, it is your opinion that the Foreign Exchanges and the price of gold are principally affected by the amount of issues of Paper Currency?"

"That is my opinion"

"What reason have you for believing that the circulation for the last half-year bore a greater proportion to the supply required for the purposes of trade than the circulation of the last half-year of 1817?"

"Because the paper was more depreciated at one time than at the other; or, in other words, because the market price of gold was higher at the former than at the latter period"

"Do you consider the price of gold to be the chief criterion by which to judge of the excessive issue of Bank Notes?"

"I do"

"I happened to be in Paris in October last, when the Bank of France reduced its issues upon discounts very considerably and suddenly. The issues of the Bank of France upon discounts at that period were 130 millions of francs, which was more than double the highest amount that was ever previously known. This step on the part of the directors of the Bank of France was occasioned by the following circumstances. The Metallic Currency was leaving the country in all directions, owing, in all probability, to some trifling degree to the over-issue of paper, partly to some large financial operations in Russia, and partly to the enormous payments that France had engaged to make to foreign powers, which amounted to nearly 20 millions sterling. The Paris bankers, therefore, anticipating a great demand for bills upon all foreign countries, were remitting specie to meet the drafts which they intended to negotiate to the agents of all those foreign powers, with a small advantage upon their remittance. The sudden diminution, however, of the discounts of the Bank, caused the Exchange to turn in favour of France, and immediately paralysed all these operations; the Metallic Currency made a retrograde movement, and was restored to

Paris and to those parts where the greatest distress had been felt"

"You have stated that you attribute the present high price of gold above the Mint Price, and the unfavourable state of the Exchange, to the excessive issues of the Bank of England, influencing thereby the general paper circulation of the country; have you any other reason for deeming the issues of the Bank of England to be excessive, except that indication which you collect from the price of gold and the state of the Exchange?"

"I never saw these effects produced by any other cause in any country in the world"

"Is the Committee to understand your opinion to be, that a high price of gold and an unfavourable state of the Exchange ought, in the discretion of the Bank of England, to lead to a reduction of their issues until that high price of gold or unfavourable state of Exchange is reduced, if not to par, to that price above par which amounts to the expense of transfer of the precious metals from one country to the other"

"I am decidedly of that opinion"

"Is the Committee to understand you to be of opinion that that is the true criterion for the Bank to look to, whether the Bank be open or shut?"

"It is, in my conception, the only criterion"

"I consider the same doctrine to hold good in the case of war as well as of peace"

"You are of opinion that the partial openings of the Bank failed in effect, because the Bank did not simultaneously contract their paper issues, and not because a partial opening would in no case have any effect whatever?"

"In my view of the subject, a partial opening will always fail unless the whole Currency of the country be previously reduced in amount, so as to restore it to the standard of the Metallic Currency thus partially issued"

"Of that restoration, you are understood to admit no other test than the favourableness of Exchange and the reduction of the price of gold to the Mint Price?"

"I know of no other test"

"If we reduce the amount of our paper circulation sufficiently

the precious metals would flow into the country from every direction—no Act of Parliament could stop the current"

"I should consider it a breach of contract for the Government of this country to alter the Mint Price of gold"

This witness entered into numerous details in support of his opinions, which would be too long to insert here

116. Mr. William Ward, a Bank director, a cambist, and Mediterranean merchant. *Lords' Committee, p.* 60—

"You have stated that a reduction of four millions in the amount of Bank Notes in circulation would probably produce a favourable turn in the Exchanges; do you found such an opinion upon reasoning, or upon having observed, as a cambist, that the diminution or increase in the numerical amount of Bank Notes has usually produced corresponding effects upon the Exchanges, and the price of gold in this country, since the Bank restriction?"

"I ground my opinion upon reasoning; I do not rely upon the numerical amount of Bank Notes exclusively"

"Can we confidently depend upon the effect of a reduction of Bank Notes towards producing a favourable Exchange?"

"I would rely upon it in an Exchange transaction where my own interest was at stake"

(*To the Commons' Committee, p.* 73)

"To what extent do you conceive the rate of Exchange and the price of gold are affected by the issue of Bank Notes?"

"I conceive they are affected to a very considerable extent, directly or indirectly"

"Supposing the other causes which affect the Exchange to operate equally at two different periods, do you think the price of gold, and the rate of Exchange, would be the criterion by which you might judge the adequate or excessive issue of Bank Notes?"

"Yes, I do"

"Under a system of cash payments, do you believe that the Market Price of gold will ever be permanently above the Mint Price, or the rate of our Foreign Exchanges more below par than would amount to the expense of the transmission of gold from this country to the Continent?"

"No; the Market Price would not exceed the Mint Price permanently"

"Then, would the Bank ever have occasion to pay more than the Mint Price for the gold they purchase?"

"I conceive they would not have to pay more"

117. Mr. Samuel Thornton, Bank director for thirty-nine years. *Commons' Committee, p.* 85—

"In regulating the amount of their issues, by what principle is the conduct of the Bank of England guided?"

"I have always considered it my duty to consider the amount of the Notes out, and what could be the cause for a call for an increase. I also felt it my duty to look at the state of the Foreign Exchanges and the price of bullion"

"Have the goodness to state your reason for thinking it desirable to take into the account the rate of Exchange, and the price of bullion, in regulating the amount of the issues?"

"It must be obvious that if there were an excess of Bank Notes beyond what was required by the trade of the country, the price of bullion would thereby be raised; and I am ready to admit that it would have the same effect upon the Exchanges"

118. Mr. John Irving, of the firm of Reid, Irving, and Co. *Commons' Committee, p.* 94—

"Putting out of consideration the embarrassment of trade, which might be occasioned by a limitation of the issues of the Bank, do you think it is in the power of the Bank, by such limitation, to restore a favourable rate of Exchange, and to reduce the price of gold?"

"I am of that opinion"

"Could such fluctuations take place if we possessed a metallic Currency, as the measure of our Exchange with foreign countries?"

"Certainly not"

119. Mr. Holland, a partner of Baring, Brothers, and Co. *Commons' Committee, p.* 114—

"In what degree do you consider that the Foreign Exchanges

are affected by the increase or diminution of Bank of England paper ?"

"I certainly consider that the Foreign Exchanges are affected by the increase of Bank of England paper"

"Do you think a considerable reduction of the amount of Bank of England paper would have the effect of restoring the Exchange in favour of this country, and of preventing a very considerable depression ?"

"That is my opinion"

"As you consider there would be no great fluctuation in the price of gold, supposing the circulation of this country to consist of coin, or paper convertible into coin, to what do you attribute the present fluctuations ?"

"The quantity of paper in the market is greater than the market can bear. If it is thought desirable to reduce the price of gold to £3 17*s.* 10½*d.*, I conceive that that can only be done by a reduction of the paper"

"You have stated that action and re-action will bring Exchanges round, and bring gold to its level ; if that is the case, in what way can you account for the circumstance that the coin has, from the beginning of his present Majesty's reign, constantly found its way out of the country, and not found any re-action to bring it back again ?"

"If the Market Price of gold is higher than the Mint Price, it is impossible to keep it in the country"

"Would you not think one of the circumstances that would render the Exchanges unfavourable to this country, and raise the price of gold above the Mint Price, to be an unfavourable state of things in this country, or, in other words, a balance of payments against the country ?"

"No I do not ; because I should call gold the general leveller between all commercial nations, and that it invariably brings back the Exchanges to their proper level, taking gold against gold, as the standard of value"

"If the Bank of England paid in specie upon demand, do you believe there ever could exist, for any length of time, a material difference between the Mint and the Market Price of gold ?"

"Decidedly not, in my opinion"

120. Mr. Thomas Tooke. *Lords' Committee, p.* 168—

"By what meaus do you think that the Exchanges could be restored, and the price of gold reduced?"

"By keeping down the Bank issues of their notes to their present amount, and judging, by the course of Exchange and of the bullion market, how far any further reduction might be necessary to acomplish that object"

"What do you mean by our circulation being at a level with that of other countries?"

"When the price of bullion and the Exchanges combined are at, or within a trifle of, par"

"Do you consider a favourable course of Exchange as an indication that there is not an excess of paper issues?"

"If that state of Exchange is of any considerable duration, it affords a presumption that the issue has not been excessive during that period, but the only undeniable test is the price of gold being that into which the paper is convertible"

"It appearing by accounts before the Committee, that from the 13th April, 1804, to the 17th November, 1805, being eighteen months, that the Market Price of gold was uniformly £4, and that during the same period of eighteen months the course of Exchange was uniformly in our favour, are you of opinion that during that time there was an excess of paper issued?"

"Upon the whole I should answer in the affirmative as I have before said that I consider the price of gold to be the only unerring test, and that the Exchanges, even for moderately long intervals, afford only a presumption"

"State the ground upon which you consider the price of bullion as a surer test of the question of the excessive issue of paper, than the course of Exchanges?"

"Because, if the coin be perfect, and the paper strictly convertible into that coin, there cannot be any inducement to any individual (the Bank issuing the paper excepted) to give more than £3 17*s.* 10½*d.* per oz. for gold of the same standard, while the Exchange may be influenced by several circumstances, within the limits in time in which, and of expense at which, the coin could be brought from one country to the other. The Exchange may therefore fluctuate, while the price of gold remains stationary"

"Do you mean by an excess of paper issued, not an excess

above what the demand of internal commerce may require, but an excess above that amount to which you think the paper should be reduced, in order to bring the Market Price of gold down to the Mint Price ?"

"I do not know any criterion of the internal demand for a medium of circulation, but that amount which would have circulated if the Currency had consisted of coin only, or coin and paper convertible into coin"

121. Mr. Ricardo, *Lords' Committee, p.* 187—

"The Bank has always the power to regulate the price of bullion by limiting or increasing the quantity of their notes"

(*Commons' Committee, p.* 133)

"Do you conceive that the Paper Currency of this country is now excessive, and depreciated in comparison with gold, and that the high price of bullion, and low rate of Exchange, are the consequences as well as the sign of that depreciation ?"

"Yes I do"

"Then, do you consider the high price of gold to be a certain sign of the depreciation of Bank Notes ?"

"I consider it to be certain sign of the depreciation of Bank Notes, because I consider the standard of the Currency to be bullion, and, whether that bullion be more or less valuable, the paper ought to conform to that value, and would under the system we pursued previously to 1797"

"It appears by the accounts already referred to, that the price of gold in this country in April, 1815 was £5 7*s.*, and in April, 1816, £4 1*s.*, being a difference of from 25 to 30 per cent., such price being always measured in our Paper Currency; do you know whether, during the same period, any such variation, or any variation, in the price of gold, took place in France, or in any other continental country ?"

"It appears to me that in France there can be no variation in the price of the metal, which is the standard of the Currency, and, with respect to the variations in the other metal, which is not the standard of the Currency, it must at all times be confined to the variations which take place in the relative value of the two metals generally in Europe"

"If then it should appear that during the period referred to

no variation whatever has taken place in the price of gold in Paris, would you infer from that circumstance that the variation in the price of gold between April, 1815, and April, 1816, arose from the variation in the value of paper, and not of gold?"

"Every fall in the price of the standard metal is immediately corrected in France, by a reduction of the amount of the circulation; if no similar reduction takes place under the same circumstances in our circulation there must necessarily be a redundancy, and an excess of the market above the Mint price of gold; **in a sound state of the Currency the value of gold may vary but its price cannot**"

"The variation you alluded to in your answer to a former question is what you meant by the depreciation of the paper in your answer to a question before put to you?"

"From whatever cause may arise the difference in the value between paper and gold (and I have enumerated several), I always call the paper depreciated when the Market Price exceeds the Mint Price of gold"

"Do you consider the difference between the Market and Mint Price of gold to be the criterion of the depreciation of Bank Notes?"

"Strictly so"

"Do you not consider that coin or bullion are distinguishable from Bank Notes in this important respect, that the coin or bullion, being the medium of universal Exchange, operates in the nature of a Bill of Exchange, whereas the Bank Note does not possess this quality; must not, therefore, the value of the coin or bullion follow the rate of the Exchange, whilst the Bank Note cannot be influenced by such an operation?"

"Certainly; a Bank Note not payable in specie is confined to our circulation, and cannot make a foreign payment; a Bank Note payable in specie is the same thing as coin or bullion"

"May not this distinguishing quality between the Bank Note and the bullion explain the difference of value, without its following that the Bank Note is depreciated for any purpose of measuring the value of commodities within this country?"

"No, I think it cannot; the term depreciation, I conceive, does not mean a mere diminution in value, *but it means a diminished relative value on a comparison with something which*

is a standard. And, therefore, I think it quite possible that a Bank Note may be depreciated, although it should rise in value, if it did not rise in value in a degree equal to the standard, by which only its depreciation is measured"

"You have stated an opinion, that the contraction of issues of paper would at all times restore the price of gold to the Mint Price, and render the Exchange favourable to the country; supposing the balance of payments of the country to be against us, in what manner would you have them paid?"

"It appears to me that a reduction in the amount of Currency may always restore the price of bullion to the Mint Price; but I have not said that that will always restore the Exchange to par"

122. Mr. Alexander Baring, afterwards Lord Ashburton. *Lords' Committee, p.* 10—

"Is it your opinion that the Exchanges and the price of gold are affected by the increase or diminution of the circulation of the Notes of the Bank of England?"

"I can have no doubt of it whatever; I have always considered the price of bullion and the rates of Exchange, which, for this purpose, are the same things, dependent on the paper circulation, and liable to be regulated by its contraction or expansion. I do not mean to say that the Foreign Exchanges, or the price of bullion, would vary always in proportion to any alteration in the amount of the paper of the Bank of England, or even of the paper of the country at large, because there are various circumstances which, at different times, vary the amount of the circulating medium required for the use of every country; and sometimes, for instance, twenty-five millions of Bank paper may be too much, when, at another period, thirty millions may be too little. It is the great defect of a Paper Currency that it cannot adapt itself to this change of circumstances"

"Are you of opinion that the loans which have been contracted for in Foreign States, particularly in France, since the peace, have had an unfavourable effect upon the Exchanges of this country?"

"The circulation of the country being in its present state, payments abroad, from whatever cause arising, must have an effect upon the Exchange"

"What do you mean by the present state of the circulation of the country?"

"I mean that if the circulation were in its former state of payment in specie, that no payments abroad would bring the Exchanges materially below their par; but with a paper which has no regulator of its value, it is undoubtedly liable to depreciation by foreign payments, as has been amply proved in the course of the last war"

"Were you at Paris at the time of the great crisis of the Bank of Paris?"

"I was; and I believe the information contained in the Governor's report to the proprietors in January last, as to the effect of the reduction of their issues upon Foreign Exchanges, and upon the amount of bullion in their vaults, to be correctly stated. The effect of the reduction in their discounts upon the Exchanges, and upon their bullion, seems to me singularly applicable to the present question. Their bullion was reduced, by imprudent issues, from 117 millions of francs to 34 millions of francs, and has returned, by more prudent and cautious measures, to 100 millions of francs, at which it stood ten days ago"

"Are we to understand, then, that, in your judgment, considerable importations of grain in years of unfavourable harvests would have an unfavourable effect upon the Exchange?"

"I think it would in any country having a circulation of paper, not payable on demand, and where there are no means of contracting its amount, so as to perform for the circulation the same office which a sound circulation of specie would do for itself"

"Would it have the same, or any, effect in a country where the circulation was partly of specie and partly of paper, convertible into specie, as before the Bank restriction?"

"I think that no demand, however pressing, and of whatever nature, would make such a fall in the Exchanges as would exceed the expense of the transport of coin, combined with the risk of the violation of the law, so long as a law exists against exporting the coin. This opinion, founded, as it is, upon the principle of circulation, is amply confirmed by the uniform experience of this country before the restriction of cash payments,

and of every other country with which I have been acquainted. This principle has been put, perhaps, more severely to the test within the last two years in France than in any other instance. France having had a large payment to make abroad, beyond the apparent means of her commerce, and without any equivalent return, and these payments having produced no derangement whatever of the circulation of that country"

123. Mr. John Ward, general merchant, with much experience in money operations. *Commons' Committee, p.* 239—

"Is it your opinion that the rate of Foreign Exchanges, and the Market Price of gold, are affected by an increase or diminution in the amount of Bank paper?"

"Certainly"

"Do you think it would be in the power of the Bank, by a reduction in the amount of their paper issues, to restore a favourable rate of Exchange, and to reduce the Market Price of gold to the Mint Price?"

"That is my opinion"

"Are you of opinion that, under the restriction of cash payments, the excess of the Market Price above the Mint Price of gold is an indication of the Paper Currency being depreciated, during the restriction of cash payments?"

"Certainly"

"Is the amount of that excess of the Market above the Mint Price of gold the measure of that depreciation in your opinion?"

"It is"

"You have stated that you consider the paper of the Bank of England to have been depreciated by excessive issue; during how long a period do you consider that depreciation to have existed?"

"I cannot distinctly state for how long a period unless I could compare it with the value of gold"

"About how long?"

"So long as the price of gold bullion has been above the Mint Price"

124. The above extracts, which are only a portion of the evidence given by the great majority of the witnesses, are

sufficient to shew the extraordinary change which had taken place in the opinion of the commercial world since the Report of the Bullion Committee, with respect to the great question of the connection between the Paper Currency, the price of bullion, and the Foreign Exchanges. The old opinions had scarcely a voice in their favour; even Mr. Harman, who had on all previous occasions been the stoutest antagonist of the principles of the Bullion Report, was considerably shaken in his opinion. Notwithstanding, however, that the governor and deputy-governor, and several other directors of the Bank, had given in their adherence to these doctrines, the majority of the court still persisted in the old opinions; and, on the occasion of some questions having been sent for their consideration by the Committee of the House of Commons, took the opportunity of recording publicly their disapproval of the doctrines which were now in the ascendent. On the 25th March they resolved—

"That this court cannot refrain from adverting to an opinion, strongly insisted upon by some, that the Bank had only to reduce its issue, to obtain a favourable turn in the Exchanges, and a consequent influx of the precious metals; the court conceives it to be its duty to declare that it is unable to discover any solid foundation for such a sentiment"

125. The Report of the Lords' Committee contented itself with recording the opinions of the different witnesses upon the great question so long agitated, it pronounced no judgment of its own upon the soundness of the different views. It, however, was very decided in the recommendation to return to the ancient metallic standard as speedily as could be done, with a due regard to the interests of commerce. The Committee of the Commons expressed their opinion that, when the Exchanges became unfavourable, and the Market Price of gold rose above the Mint Price, the only mode in which the Bank could have retained the coin in circulation was by contracting their issues. And they said that, however the Exchanges might have been affected during the last and preceding year, they had no reason to apprehend the same or any other causes could continue to affect them in such a degree as to preclude the Bank of England, by a constant reference to the Exchanges and the price of gold, and, when

necessary, by a cautious reduction of their Paper Currency, from gradually approximating its value to that of gold, and ultimately re-establishing and maintaining it at par. Both Houses agreed in recommending that after the 1st February, 1820, the Bank should be required to deliver gold of standard fineness in quantities of not less than 60 ounces, at £4 1*s.* per ounce; that after the 1st October, 1820, the rate should be reduced to £3 19*s.* 6*d.*; and after the 1st May, 1821, it should be reduced to the Mint price of £3 17*s.* 10½*d.* per ounce, that this liability to pay in bullion should continue for not less than two, nor more than three years, from 1st May, 1821, when payments in cash should be resumed. They also expressed their opinion that the great destruction of country bank paper of 1816-17 had been partly instrumental in reducing the price of gold, and making the Exchanges favourable during that period. That, from the numerous circumstances affecting the value of Bank of England paper—the varying state of commercial credit and confidence—the fluctuations in the amount of country bank paper, and other reasons, no satisfactory conclusion could be drawn from the mere numerical amount of their issues at any given time

126. The Report was brought before the Lords on the 21st May, 1819, when a petition, signed by about 500 merchants, bankers, and others, was presented against it, on the ground that the extensive contraction of the Bank's issues in so short a time, as would be rendered necessary by it, would cause general embarrassment. The directors of the Bank communicated a very strong representation, containing similar views, to Lord Liverpool, which was also laid before the House. Lord Harrowby, however, that evening, brought in the ministerial resolutions, which were framed in accordance with the Report, and the last of which was—"That it was expedient to repeal all laws prohibiting the melting or exportation of the gold or silver coin of the realm." Lord Lauderdale moved a series of resolutions in opposition, the principal of which was that the Mint Price of gold should be altered to correspond with the Market Price

127. The resolutions were moved in the Lords by Lord Liverpool, in a speech of singular clearness and ability. Every

word that he uttered told with crushing effect upon the course of the Government in 1810. He was an entire convert to the principles of the Bullion Report, in their fullest extent. He said that the three chief points in question were, whether—1. It was expedient to return to some fixed standard of value. 2. Whether that standard should be the ancient one. 3. By what means it could be done. That the first point was the most important, because it would be found that all the opposition to the measure was simply a disguised hostility to return to cash payments at all. Many considered that there should be no standard of value; but what civilized country had ever acted upon this principle since the world began? In former times the most disgraceful measures had been resorted to, to depreciate the standard, but even that was not so bad as having *no* standard. No country in the world had ever established a Currency without a fixed standard of value; it might be gold, silver, copper, or even iron, but it must be something which had a real value; it could not be paper, which had no real value, but is only a promise of value, and England, the first country for commerce and knowledge of political economy, should not be the first to confer on any body of men, however pure their motives and conduct, the power of making money according to the suggestions of their own interests. Policy, good faith, and common honesty called on them to return to the ancient standard. No doubt some of the public debts were contracted in a depreciated Currency, but yet the contract was to pay according to the ancient standard, and they must adhere to that if they meant to act honestly. He ridiculed the idea of the danger or difficulty of doing so. In 1816 gold fell to the Mint Price, and, when it was quoted at £3 18*s.* 6*d.* in the public lists, it might, in fact, have been bought cheaper, only the Bank determined to be the only purchaser, and gave that price. Since then it had risen to 6½ per cent. above the Mint Price, but at the time he was speaking it was only 3 per cent. above the standard price. A noble Earl had doubted whether it was in the Bank's power to bring gold to the Mint Price by contracting its issues. The question was, no doubt, somewhat obscure, but the Report would shew that there was not a single practical man, even among those most hostile to the intended measure, who did not admit that a contraction of the Bank's issues must necessarily

have the effect of rendering the Exchange favourable to this country, and of lowering the price of bullion. He himself entertained no doubt upon the point. The plan proposed by the resolutions gave ample time for the Bank to make all necessary preparations without injury to the commercial interests by too sudden a contraction. The subject of the quantity of the circulating medium necessary for commercial transactions was one of the greatest importance; it was one, however, in which it was impossible to fix any nice proportion, and in his opinion, **the only criterion of a circulation being sufficient or excessive was to be found solely in its value when compared with the precious metals.** The real value of paper could only be ascertained by its convertibility into specie. If that test was adopted it made little difference what the circulating medium was composed of. In Lancashire it chiefly consisted of Bills of Exchange, which was found to succeed perfectly in that county. If any country or district was possessed of real and substantial wealth, it would soon find a circulating medium for itself. The measures proposed, in his opinion, would lead to no inconvenience; if any could have arisen, they had been incurred already, and if Parliament would steadily adhere to the course recommended, they would see the ancient standard restored without material distress to any one

128. Lord Lauderdale made some severe remarks upon the strong speech made by Lord Liverpool in favour of the very doctrines he had been twelve years in controverting. Lord King heartily approved of the resolutions, and especially that the time was fixed by Parliament, when the Bank should resume cash payments, as the public would now have a security beyond the discretion of the Bank directors. The numerical amount of Bank notes could be no guidance for the amount of issues. The only rule which could be given for their regulation was to keep gold at the Mint Price. This was the only check on the vicious practice which 22 years' usage had accustomed some to consider as the natural state of the Currency of the country

129. Lord Grenville spoke with great earnestness in favour of the resolutions, and his sentiments deserve most particular

attention, because he was one of the Cabinet who originally proposed the Restriction Act. He now, however, came forward to repeat, in the most emphatic terms, what he had already avowed, that he considered the restriction as one of the greatest calamities under which this suffering country laboured. He had frequently had occasion to lament and deplore the part which he had himself taken on its original proposition, in prolonging it for the term of the then existing war. Having avowed his error in so doing, as became an honest man, at the commencement of the last war, and having foreseen, but too truly, all the misery that followed, he felt great joy that the country could now look forward with certainty to the repeal of that injudicious and unfortunate measure. There was no difference in principle between the excessive issues of the Bank of England and those of Austria, Prussia, and Russia. He was most anxious to place on record his opinion, that the evils of the restriction had far counterbalanced its good, and that future statesmen might know that the opinion that this measure had saved the country was not unanimous. He hoped it would be recorded of him, as his decided conviction, that in proportion to the danger under which the country laboured, was the impolicy and desperate madness of such a measure as they were now considering how to rescind. Whatever temporary advantages might be furnished to individuals from too liberal issues, those very individuals generally suffered tenfold injury. While the Bank was lending money with one hand, with the other it was shaking the foundation of contracts, affecting all prices, involving the country in distress and individuals in ruin ten times greater than any benefits they could derive from liberal issues. Increased bankruptcies invariably followed increased issues. The miseries of 1816 were the sure consequences of the extravagant issues of the preceding year; the country bank paper, which was not propped up by law like Bank paper, was fearfully depreciated and had involved the whole kingdom in general desolation. Trade, commerce, agriculture, the classes even most remote from any connection with the paper system, found themselves suddenly consigned to total and inexplicable ruin. The sight of the misery thus caused would fill them with horror. In commerce, as in war, there could be but one sure basis of management, and that

was a Currency regulated by a standard of metallic value. Not that metal was necessary as *metal*, but as possessing *value*. It was impossible to represent value except by value. For this reason, all civilized countries had adopted a metallic standard. The original names of the divisions of money in all known languages referred to the weight of the metal. It was so among the Hebrews, the Greeks, the Romans, the French, the English. The pound in England, and the livre in France, were originally a pound weight of metal. The weight of the metal had been diminished in each country in the coins at different periods, but each case of such reduction was a fraud upon the people, and it had always been done in times of discontent and turbulence. It was attempted to be done in the days of Edward VI., but the advisers of the measure were compelled to retrace their steps through fear of an insurrection. It was time, therefore, to return to a fixed measure, and to put an end to a system of variable value, when every one's property was at the mercy of a body of individuals. We must have a Currency established on public faith—on public laws. The depreciation of the Paper Currency had been nearly one third, and every one who held it had lost to that amount. There was no disposition now in any class to deny this. The Directors of the Bank of England alone refused to admit the principles of the Bullion Report—so wisely and irrefragably established by that great man, the late Mr. Horner—a report, which could not be read without instruction and admiration, for the depth and soundness of its doctrines, and bitter regret for the premature loss of a statesman who was so well calculated to serve and adorn his country. If the Directors would only now believe in the Bullion Report, there might be some hope of them, but as they did not, they were the last persons who should be left to manage the Currency at their own discretion. He did not believe in any calculations as to the quantity of circulating medium necessary. It was now time that the connection between the Government and the Bank of England should be dissolved. It was in direct violation of the principles upon which the Bank was founded. They must revert to the legitimate standard of this country, in respect to its currency. It was not the value of that currency, but the value of the metal by which it was

regulated, as paper was regulated by the price of bullion. In the Bullion Report, which hereafter, he did not doubt, **would form a standard, constant and unerring,** in the political economy of this country, of whose extraordinary merit he was not aware until lately, this subject was clearly defined. He gave his entire, unlimited, and unqualified approbation to the ministerial resolutions

130. Such are short outlines of the speeches of Lord Liverpool and Lord Grenville upon this momentous question, which well deserve to be studied at length in the present time, when many of the heresies and fallacies they combated so strongly and convincingly, seem springing up again in the public mind. The resolutions were then put and agreed to without a division

131. The resolutions in the Commons were introduced by Mr. Peel, on the 24th May, who freely owned that, in consequence of the evidence he had heard, and the discussions upon it, his opinions had undergone a material change. He acknowledged, without shame or remorse, that his opinions were very different now to what they were when he voted against Mr. Horner's resolution in 1811. Having determined to dismiss from his mind all former impressions, and the memory of the vote he had formerly given, and to give the question his unprejudiced and undivided attention, he had now come to the conclusion that Mr. Horner's resolutions represented the true nature and laws of our monetary system. Every sound writer agreed that the true standard of value consisted of a definite quantity of gold bullion, a certain weight of which, with an impression on it denoting it to be of that certain weight and fineness, constituted the only true, intelligible, and adequate standard of value. No doubt the Bank was perfectly solvent, but did it follow from that there could be no over-issue of its paper? If solvency alone was a sufficient proof that there was no excess of circulation, the theory of Mr. Law was just, and the land, as well as the funds, might be safely converted into a circulating medium. There was, in fact, no test of excess or deficiency, but a comparison with the price of gold, As the Bank had so entirely repudiated the principles of the Bullion Report, they could not be expected to act upon them; it

might, therefore, appear necessary to prescribe such a limitation of their issues as would secure the power of the Bank over the foreign Exchanges. He himself thought this a very unwise plan because it depended so much on circumstances, whether or not there was an excess of circulation. *There were occasions when what was called a run on the Bank might be arrested in its injurious consequences by an increase of its issues.* There were other occasions when such a state of things demanded a curtailment. In the year 1797, when a run was made on the Bank, but when the Exchanges were favourable, and the price of gold had not risen, it was proved that an extension of issues might, by restoring confidence, have rendered the original restriction unnecessary. On the other hand, if the run was the effect of unfavourable Exchanges and the consequent rise in the price of gold, the alarm must be met by a reduction of the issues. *It was, therefore, impossible to prescribe any specific limitation of issues* to be brought into operation at any period, however remote. The quantity of circulation which was demanded in a time of confidence varied so materially from the amount which a period of despondency required, *that it was an absolute impossibility to fix any circumscribed amount.* He said that the time was come when the connection that existed between the Government and the Bank must be dissolved, and it must revert to its original principle of business. The obstinate opinions of the Directors of the Bank shewed that they were unfit to be trusted with the management of the pecuniary interests of the British community. The House must resume its powers which it had abdicated too long. There could be no inconvenience in compelling the Bank to pay in specie at the Mint Price. They had done so from 1776 to 1797, and the price of gold never rose above £3 17*s.* 6*d.* But it was said that it had since risen to £5 2*s.*, and that the standard was variable. The fact was, we had since then introduced a substitute for gold, and its price was considered in relation to that substitute. Let not the House be led away by any calculation to mistake the **price** for the **value.** When people talked of gold rising in *price,* were they prepared to shew that it had risen in *intrinsic value?* Let them not talk of its price in paper, but in any other commodity of a real and fixed value. So far from gold having risen in value,

since the last fifty years, it had actually fallen in value, partly from the greater abundance of the metal itself, and partly from the substitutes that were used for it. A very prevalent theory was, that instead of regulating paper by the value of gold—gold should be regulated by the value of paper. This was nothing less than a fraud upon the public creditor. It was vain to think that foreign nations could be imposed upon by such a deception. The only result would be, that after the public creditor had been cheated, the coin would be debased. The only course was to revert to the ancient standard of the realm, and to beware of arguments, which were not only fraudulent, but would not accomplish their own objects, while they would aggravate present difficulties. Every deviation from the ancient practice would be quoted as a precedent for a more extended departure from that practice. Under future difficulties the conduct of their ancestors would be panegyrised by the advocates of the suspension of cash payments, and conclude because the price of gold had risen still further in its relation to paper, that the principle by analogy ought to be extended. The restoration of the value of our Currency had always been a striking political feature in the history of the country, and an object of the most earnest solicitude of our most distinguished statesmen. Three periods were especially memorable for great reforms in the coinage—in the reigns of Edward I., Queen Elizabeth, and William III. These periods must ever be regarded with pride and satisfaction. They were of much greater difficulty than the present. On Queen Elizabeth's accession the coin was reduced to $\frac{1}{4}$ of its nominal value. Under Burleigh's advice she resolved to restore the value. Plenty of persons dissuaded her from that idea, alleging the difficulties of the attempt. But Burleigh maintained that those very difficulties should constitute the motives for perseverance, as they must raise and establish the character of the country, and inspire its enemies with respect. The Queen had nobly persevered, and in her monumental inscription, above all her titles to distinction, this one shone preeminent "**Moneta in justum valorem reducta.**" He then detailed the restoration of the coinage by William III. The arguments against it in those times were identical with those used against it at the present time. However, fortunately, the

firmness of King William and Mr. Montague triumphed over prejudices in theory, misconceptions in reasoning, and the greatest financial and political difficulties. The idea that this country owed its glory and military honours to an inconvertible paper currency was ridiculous; we had abundance of prosperity and military glory before 1797, before we were blessed with an inconvertible Paper Currency. The true reason of her difference from other States was that she always kept her faith inviolate. It was this that cheered the country under all dangers, and caused her to exult in victory. It was this feeling that carried the country through the dismal voyage she had just accomplished, and now that they had reached the other shore in safety, let them not abandon the great principle which had supported them. Every consideration of policy, good faith, and justice, called upon them to restore the ancient and permanent standard of value. He allowed that he had once entertained views different from those he now held, but he had given his mind candidly to a re-investigation of the whole subject, and he felt himself bound to state honestly, that he was now a convert to the doctrines regarding our currency he had once opposed

132. The debate that followed was chiefly composed of a strain of congratulation and rejoicing at the course adopted by the Government and approval of the resolution. Mr. Tierney was averse to compliment Mr. Peel too much, as he was thereby only complimenting the opinions he himself and his friends had been advocating for many years. But, nevertheless, it was a source of sincere pleasure to him to see the maxims he had so long been contending for adopted as true policy by the House, especially as such ample justice had been done to them by Mr. Peel, who now avowed them for the first time. Mr. Ricardo said that, when the directors of the Bank were called individually before the Committee, they fully admitted that the price of gold and the foreign Exchanges were affected by the amount of their issues, but, when collected as a court they resolved in direct opposition to such opinions. When they avowed such inconsistent opinions, and after the experience the House had had of their conduct, it would be the highest indiscretion in Parliament not to take the preparations for the resumption of cash payments

out of their hands. Mr. Alderman Heygate was almost left alone, to adhere to the opinions of Parliament in 1811; he maintained that no depreciation of the paper did exist at that time, or ever could exist. However, the current of opinion was so strong and unanimous, that, though some unimportant amendments were brought forward, modifying some details in the resolutions, but not at all denying their general truth, these were all withdrawn, and the resolutions were passed without a dissentient voice. Mr. Canning declared, amidst loud and general cheering, that it was the unanimous determination of Parliament that the country should return as soon as possible to the ancient standard of value, in the establishment of a Metallic Currency. The bill passed the Commons with little further remark

133. In the House of Lords the Marquis of Lansdowne rejoiced at the introduction of the Bill, on account of the sound principles of political economy it contained by recognising a metallic standard as the only safe foundation for the circulating medium. It recognised the great principles, that the price of gold and the foreign Exchanges depended upon the state of the Currency. He hoped the country never again would hear the wild theories about the Currency which had been so prevalent, which were very properly stigmatised by the bill before them, every enactment of which declared their falsehood. By acting on those ruinous ideas, the country had been burdened with an overwhelming mass of debt and taxation. The Earl of Liverpool said the bill had met with no opposition, and required no defence. The chief provisions of this Act, Statute 1819, c. 49, were—

1. "The Acts then in force for restraining cash payments should be continued till the 1st May, 1823, when they were finally to cease"

2. "That, on and after the 1st February, and before the 1st October, 1820, the Bank of England should be bound, on any person presenting an amount of their notes, not less than of the value or price of 60 ounces, to pay them on demand at the rate of £4 1*s.* per ounce, in standard gold bullion, stamped and assayed at the Mint"

3. "That between the 1st October, 1820, and the 1st May,

1821, it should pay in a similar manner in gold bullion at the rate of £3 19*s.* 6*d.* per ounce"

4. "That between the 1st May, 1821, and 1st May, 1823, the rate of gold bullion should be £3 17*s.* 10½*d.* per ounce

5. "During the first period above mentioned, it might pay in gold bullion, at any rate, less than £4 1*s.*, and not less than £3 19*s.* 6*d.* per ounce in the second period, at any rate, less than £3 19*s.* 6*d.*, and not less than £3 17*s.* 10½*d.*, upon giving three days' notice in the 'Gazette,' and specifying the rate; but, after doing so, they were not to raise it again"

6. "These payments were to be made in bars or ingots of the weight of 60 ozs. each, and the Bank might pay any fractional sum less than 40*s.* above that in the legal silver coin"

7. "The trade in gold bullion and coin was declared entirely free and unrestrained"

134. In conjunction with this Act, a most salutary measure was passed (Statute 1819, c. 76), to put a stop to the evil which the Bank directors themselves alleged had brought about the catastrophe of 1797, viz., the enormous sums the Government had been in the habit of demanding from the Bank by way of advances, without any Parliamentary security, which Mr. Pitt had so grossly abused. By this Act, the Bank was forbidden to make any advances of any description, without the express and distinct authority of Parliament for that purpose first had and obtained

135. Thus, at length, this great act of national good faith was accomplished. The final triumph of these great principles of truth and honesty is a memorable example of the innate power of truth to gain the ultimate victory when allowed the inestimable advantage of free discussion. No one of ordinary intelligence will now venture to deny that the Currency was greatly depreciated at the time the Bullion Committee were appointed, and if the coin had been degraded to the value of the paper, it would simply have been a national bankruptcy. An amazing amount of ingenious sophistry was employed, no doubt much of it proceeding from honest though mistaken conviction, a still larger portion of it arising from the supposed interests of commerce, to maintain

that Bank Notes were not depreciated. The real truth, however, was discovered by Mr. Thornton and Lord King, and published by them, in the pamphlets alluded to above. It was unhesitatingly adopted by the greatest statesmen of that day, as appears by the Report of the Committee of 1804 ; it was then pronounced more loudly and distinctly, and with greater authority by the Bullion Committee in 1810, but it was ridiculed and condemned by the great majority of the commercial world, whose wild speculations it had a tendency to curb, and rejected by an immense majority in Parliament in 1811. But the labour was not wasted in vain. The seeds of truth were firmly planted in the public mind ; the doctrines, thus despised and rejected in 1811, were sifted and discussed by the public during the next eight years, and when the next discussion upon them took place in 1819, they had obtained the irresistible ascendency in the public mind, so that they were enthusiastically adopted by Parliament without a dissenting voice

136. The overwhelming preponderance of mercantile opinion in 1819 adhered to the doctrines of the Bullion Report. One body alone obstinately refused to be convinced—the majority of the Court of Directors of the Bank of England. Six of their directors had given their evidence in favour of the new doctrines; but the court determined, with inveterate pertinacity, to have a last fling at them, and passed the resolution we have already quoted. It took eight years longer for the light to penetrate the Bank parlour. At length, in 1827, the Bank was at last compelled to strike its colours, and the resolution of 1819 was solemnly expunged from its books

137. When, as we have already seen, the doctrine of the rise of the Market Price of bullion, and the fall of the foreign Exchanges from a depreciated currency, were so well understood by the merchants and statesmen of 1696-97, and the political economists of the last century, it may be interesting to inquire what was the fallacy that so long imposed upon men of undoubted ability, and who doubtless held their convictions in perfect good faith and honesty ? What was the cause of the great degeneracy in sound doctrine between 1696 and 1811, so that it became necessary to argue the question from its very foundations? It

was this, that the men of 1696 could see that the coinage did not contain much more than half of its proper weight of bullion. But the men of 1811 failed to see that the Bank note could only preserve its value by maintaining a certain proportion with the Metallic Currency. That an excess of *quantity* of the notes diminished their value relatively to gold; and this diminution in the value of the promise compared to what it professed to represent was exactly identical in principle with a debasement of the coinage by alloy, or a depreciation of it from deficiency in weight of bullion. When the Bank note became the measure of value, it was imperatively necessary that they should be able to purchase in the market the weight of bullion they professed to represent. When bullion rose to £5 10*s*. when paid in Bank notes, they were exactly in the same predicament as the coinage was under William III., when it had lost 25 per cent. of its weight. The diminution in the weight of the coinage was palpable to the senses, the diminution of the value of the "promises to pay" was only perceptible to the eye of reason and intelligence, and long escaped the observation of men who conscientiously disbelieved it

138. We will now bring this long but important discussion to a close, by observing that the grand principles of the Bullion Report are not what are properly termed matters of **Opinion** at all, but of **Demonstration.** Persons of the most excellent taste and judgment may entertain the widest differences of opinion on the comparative merits of various poems, or pictures, or pieces of music. There is no absolute standard of truth, which will enable any man to assume the office of arbiter on any of these subjects; at least none has yet been discovered. Different poets, artists, and musicians are most in harmony with different mental constitutions, of which there is no unerring standard of excellence. So in politics, it is a pure matter of opinion and judgment which is the best form of government, and which is most suitable for any particular people. But the principles of monetary science, as laid down in the Bullion Report, are matters of a totally different nature, *they are matters of pure geometrical demonstration.* They are no more matters of opinion, in the proper sense of the expression, than the demonstrations of Euclid are matters of opinion. It is acknowledged that there is

an absolute standard of truth in such matters. There are many excellent persons, and of good ability in other respects, whose mental constitution is such that they never can follow out the train of reasoning, which establishes the truth of a certain famous proposition in Euclid. But we never heard of any one writing a pamphlet against the *pons asinorum*. Now, the famous doctrine of the regulation of the Paper Currency by the price of bullion is demonstrably true, and it is as vain to write pamphlets against it as against Euclid, B. I., prop. 5. When, therefore, a modern author says, "the fundamental error of Mr. Huskisson, and the Bullion Committee, on the subject, consisted in the principles which they laid down as axioms, that the measure of the depreciation of the Currency was to be found in the difference between the Market and the Mint Price of Gold"; this sentence is as wise as if one were to say, "the fundamental error of Cocker, and subsequent writers on arithmetic, is the principle which they adopt as an axiom that twenty-one is equal to twenty-one"; and when he says a little further on, "for as Bank notes never sank in value compared with specie, whatever party spirit may have affirmed to the contrary," he makes a statement which there is overwhelming evidence to prove to be untrue.

Table shewing the chief variations in the Market Price of Gold Bullion from 1790 *to* 1819, *and the true value of the Bank of England* £1 *Note during the Restriction.*

	Market Price of Gold Bullion.			Real Value of the Bank Note.		
	£	*s.*	*d.*	£	*s.*	*d.*
January, 1790 to August 25, 1797	3	17	6			
September 1, 1797 to October 19, 1798	3	17	10½	1	0	0
October 26, 1798 to September 13, 1799	3	17	9	1	0	0
September 20, 1799 to April 6, 1804	No quotation.					
April 13, 1804 to October 15, 1805	4	0	0	0	19	6
October 22, 1805 to October 2, 1810	No quotation.					
October 9, 1810	4	5	0	0	18	4·2
February 12, 1811	4	12	0	0	16	11·4
March 26, 1811	4	16	0	0	16	3
October 25, 1811	4	18	0	0	15	11
October 2, 1812	5	7	0	0	14	5
January 22, 1813	5	4	0	0	15	0
August 6, 1813	5	10	0	0	14	2
February, 1814	5	8	0	0	14	4·2
April 12, 1814	5	5	0	0	14	9
May 31, 1814	5	3	0	0	15	1·7
June 7, 1814	5	0	0	0	15	7·2
June 28, 1814	4	10	0	0	17	4
September 20, 1814	4	6	0	0	18	1·6
November 15, 1814	4	8	0	0	17	8·7
April 4, 1815	5	7	0	0	14	5
June 9, 1815	5	5	0	0	14	10
June 30, 1815	5	0	0	0	15	7·2
July 7, 1815	4	14	0	0	16	7·2
August 4, 1815	4	10	0	0	17	4
September 15, 1815	4	9	0	0	17	6·3
October 13, 1815	4	3	0	0	18	9·5
January 2, 1816	4	2	0	0	19	0·3
April 9, 1816	4	1	0	0	19	3·1
April 23, 1816	4	0	0	0	19	6
July 9, 1816	3	19	0	0	19	8·7
October 8, 1816 to April 4, 1817	3	18	6	0	19	10·2
April 18, 1817	3	19	0	0	19	8·7
July 18, 1817	4	0	0	0	19	6
January 23, 1818	4	1	0	0	19	3·1
February 13, 1818	4	2	6	0	18	11
October 6, 1818	4	2	0	0	19	0·3
January 22, 1819	4	3	0	0	18	9·5

CHAPTER XI

FROM THE ACT FOR THE RESUMPTION OF CASH PAYMENTS IN 1819 TO THE BANK ACT OF 1844

1. The great Act for the preservation of the national good faith, the restoration of the measure of value, was accomplished amidst universal applause; but, unfortunately, it had no sooner become law, than an unusually severe and long-continued disturbance in the ordinary proportions of supply and demand in a great variety of productions took place. The violent fluctuations in prices, which necessarily followed this great derangement caused much public distress, and afforded an opportunity for the antagonists of the Act of 1819 to acquire such strength as to induce the Government to tamper with the Act before it came into full effect

2. The utter prostration of all the great producing interests of the country in 1815-16, had caused such severe distress as to diminish the consuming powers of the people to an enormous extent. The importations of the great articles of consumption in 1816 were, in most cases, not half what they had been in 1814. In 1817, when the general prosperity was reviving, the shortness of the supply caused a very general and rapid rise in prices of all commodities. The inevitable consequence followed, speculation began to revive again, and was much fostered in 1818 by an expected dearth of provisions. A long-continued drought from May to September was supposed to have destroyed the greater part of the crops, and, as imported produce was unusually low, the prices of all sorts of farming produce rose to an extravagant height. Enormous importations of wheat, added to the home crop, which turned out considerably better than was expected, caused rather a reduction in the price of that, but all

other sorts of farming produce mounted up to a great height, barley being at 63*s.* 6*d.*, oats at 35*s.*, beans at 76*s.*, and peas at 70*s.*, in December, 1818. The high prices thus held out in this country caused importations on a scale of enormous magnitude at the close of 1818. After deducting the quantities re-exported the imports of colonial and foreign produce were more than double what they were in 1816. Mr. Tooke well remarks that before any great turn in the prices of commodities, there is usually a pause of more or less duration before it finally declares itself, like the slack water at the turn of the tide. There is a period during which sales are difficult or impracticable, when the prices are at a maximum, the buyer refuses to submit to them; and when they are at a minimum, the seller refuses to submit to them. A struggle of this nature prevailed through the autumn and winter of 1818-19, and just as the Act for the restoration of cash payments passed, the fall in prices was decidedly in progress*

3. The usual consequences followed these extravagant importations. Importers, trusting to the prices of 1817, had given orders to the growers, based upon these prices, and, when the crops came to be brought to market, the price had given way. Failures, accordingly, were numerous in 1819, both in England and in America, the necessary consequence of a transition from high prices, caused by scarcity, to low prices, arising from excess of supply. Towards the autumn of that year commercial credit had revived. The great importations of wheat in 1818 somewhat reduced the price in 1819, but it stood at 75*s.* in August, and the average for the whole year was 72*s.* This price continued, with a few fluctuations, till August, 1820, and at that time wheat was still at 72*s.* A decided and unanswerable proof that the discussions in Parliament, and the Act for the resumption of cash payments, had no effect at all on the price of corn. Although the Bank was permitted to pay its notes in gold, at the rate of £4 1*s.* per ounce, yet they were actually at par, as the market price of gold fell to £3 17*s.* 10½*d.* in August, 1819, and continued at that rate till June, 1822, when it fell to £3 17*s.* 6*d.*

* The whole of Mr. Tooke's observations on this great crisis are perfectly invaluable, and must be read at length by every one who wishes to form a fair judgment on the subject.—Vol. II., pp. 60-116

And, in fact, it must be remembered, that for a great part of 1816-17 the note had been within a few pence of par, and had not varied more than about 5 per cent. from par since that time.

4. The spring of 1820 had been unpropitious, and vegetation backward, until the 18th of June, when some warm and very brilliant weather occurred just at the critical period of the blooming of the wheat. In July some wet weather excited fears for the crop, and the prices advanced to 72*s.*, but the weather became very fine in the beginning of August, and thenceforth continued most propitious during the ripening and gathering of the harvest. The result was a harvest of most extraordinary abundance, and excellent quality. And even its unprecedented exuberance did not become fully known till two or three years afterwards, when it was not yet exhausted. The best authorities calculated that the quantity of the crop of 1820 was one third above the average. In July, 1821, wheat had fallen to 51*s.* from 72*s.* in August, 1819. May, June, and July, 1821, were cold and wet, and the harvest very late; wheat rose to 62*s.* in September, but the quantity produced was extremely large, and the quality very bad. In consequence of the enormous unexhausted stock of 1820, wheat fell to 50*s.* at the end of 1821, and to 42*s.* in August, 1822. The harvest of 1822 was remarkably good both in quantity and quality, and was got in early, long before the preceding crops had been consumed. In addition to this, the importations from Ireland were on an unprecedented scale. In 1817 corn was obliged to be exported to Ireland; in 1820 and 1821 Ireland exported to England upwards of 4,000,000 quarters of grain of all sorts. The natural and inevitable consequence of this was an immense and ruinous fall in the prices of all agricultural produce. Wheat fell to 38*s.* at the end of 1822.

5. The accumulation of treasure became so rapid in the vaults of the Bank in 1820, that early in 1821 the directors felt themselves in a position to resume cash payments, and an Act was passed to permit them to do so on the 1st May, 1821, instead of in 1823. By this time the Government had repaid £10,000,000 of the debt it owed to the Bank, which all the witnesses agreed was a necessary preliminary to enable the directors to contract

their own issues. The Statute 1821, c. 26, enacted that the Bank might resume payments in gold coin on the 21st May, 1821. That persons offered to be paid in coin should not have the right to demand ingots. That if the Bank did not offer to pay in coin, the right to demand ingots should continue. The last impediments to the export of bullion were swept away. The Bank was bound to exchange their larger notes for any one who demanded it, for £1 notes or gold coin, but they had the option of payment in gold or notes

6. The extravagant height to which the combined effects of an unusual and long-continued scarcity and the greatly depreciated currency, in which payments were made in 1811 and 1812, had produced the most extravagant speculations in farming. Barren wastes were reclaimed at an enormous expense, which never could have been repaid, except by maintaining corn at famine prices. Rents and debts had advanced in a similar proportion, and all classes of agriculturists, farmers, and landlords had adjusted their expenditure according to the new scale of prices which they expected would endure. Family settlements and encumbrances were calculated on the same basis. Immediately after the peace, the great fall in the price of all sorts of agricultural produce, both from greater abundance and the destruction of the rotten country paper currency, threatened all persons connected with the "landed interest" with general ruin, and, after a considerable struggle, the Corn Bill of 1815 was passed, the intended and expected effect of which was to prevent wheat ever falling below 80*s.* a quarter. The "landed interest" calculated that, with the "cost of production" of which they considered "rent" as a necessary element, wheat could not be grown with a profit at less than 80*s.* a quarter, and the intention of that Act was to secure that price to agriculturists. Buoyed up with delusive hopes, and firmly believing that the Act had for ever nailed up wheat to 80*s.* a quarter, the farmers received a fresh stimulus to speculation, and vast sums were laid out in further extending the cultivation of barren wastes. However, the circumstances we have already detailed disappointed all these calculations, and wheat stood at 38*s.* at the end of 1882 in defiance of the Act which said it ought to be at 80*s.*

7. The advocates of a national bankruptcy had been in such a small minority in 1819, that they scarcely uttered a word in Parliament, much less attempted a division. When the distress caused by the fall in prices began to pinch some classes in the country, they began to gather strength again, and commenced an attack on the Currency Law on April 9, 1821. This attack proved a complete failure, being rejected by a majority of 141 to 27. As prices continued to fall during that year, the distress continued to increase, and early in 1822 a Committee of the House of Commons was appointed to report upon the subject. They presented their report on the 1st of April; but it did not contain a word imputing the low state of prices to anything connected with the currency. They attributed it to the unprecedented abundance of agricultural produce, and proposed plans for affording the farmers and others relief by temporary advances of Exchequer bills, until the glut in the market had diminished. They recommended that the limit of 80*s.* should be reduced to 70*s.*, as 80*s.* represented a higher value at that time than in 1815. In the debate that followed, the first symptoms were manifested of the determination to make an onslaught on the Currency Act of 1819. But Lord Londonderry ridiculed the idea that the currency had anything to do with the question, and said Members had only wasted precious time in bringing it forward. But he declared that he entered his most solemn protest against the purpose of these Members to induce Parliament to commit the most flagrant deviation from sound policy and common honesty—a breach of faith towards the public creditor. Could a British House of Commons sanction such a measure, it would relieve no class of the community; but it would overwhelm all classes with ruin. Were it possible for them to be dishonest and base enough to listen to a project of national bankruptcy, the result must be most calamitous. If a Parliament could be found so degenerate, and a people so destitute of honour and common honesty, as not to start at the idea of such an abandonment of principle, the most sordid calculation would forbid the adoption of such a measure

8. The £1 note issues of the country bankers in England had been suppressed by statute 1777, c. 30; but in 1797 they

were again permitted, and, by various Acts of Parliament, this permission was continued till two years after the resumption of cash payments by the Bank of England. By the operation of these several Acts, they must have been withdrawn in 1825. The distress, however, which was attributed by so numerous and powerful a party to the contraction of the currency, was employed to induce Ministers to relax this restriction, and country bankers were permitted to continue their £1 notes till the expiry of the Bank Charter in 1833. (Statute 1822, c. 70.) In order to improve the quality of the country bank notes, the Government attempted to enter into negotiations with the Bank of England to permit joint stock banks to be formed at a distance of 65 miles from London. The Government was satisfied that if joint stock banks on the Scotch system could be formed, it would add much to the stability of public credit. Lord Londonderry pronounced a warm eulogy upon the Scotch banks, and said that it was the wish of the Ministry that a similar system should be introduced into England. The bribe to the Bank of England to consent to this arrangement was an extension of their Charter for ten years. But the negotiation failed

9. The attacks upon the Act of 1819, thrown out in the discussion of the Agricultural Distress Report, were merely preparatory to a formal onslaught on the Act itself. On the 11th of June, 1822, Mr. Western moved for a Committee to inquire into the effect of the Act upon the general interests of the empire. The burden of his speech was that all the distress the country was then suffering was due to the Act of 1819, and to that only, which, he said, had made a violent contraction in our currency at once. This assertion, which was the main pillar of his argument, is demolished by the simple fact that the great contraction of the currency, and the restoration of the note to par, took place in 1816. He moreover assumed that the currency had been depreciated ever since the restriction Act in 1797. Mr. Huskisson immediately followed in a speech demolishing the whole of Mr. Western's sophistries, one by one, and drawing a close parallel between the state of the currency in 1696 and at that time; and he concluded by moving the same resolution that Mr. Montague had done in 1696—"That this

House will not alter the standard of gold or silver in fineness, weight, or denomination." After a debate of two nights, in which several members who supported the motion disavowed all intention of tampering with the standard, Mr. Western's motion was rejected by a majority of 194 to 30, and Mr. Huskisson's amendment agreed to

10. It was strongly alleged by one party that they were compelled to pay in the restored currency the debts they had contracted in a depreciated one, and they called for what they were pleased to term an "equitable adjustment of contracts." But the argument was futile, as they knew at the time they made their contracts that Parliament was pledged to return to cash payments within a very short period after the termination of the war. Moreover, they totally left out of consideration that they had been able to discharge an immense amount of mortgages, burdens, &c., in a depreciated currency, which had been contracted in a good currency. All the mortgages and annuities on landed property which were contracted before the great depreciation of the currency were paid for some years in a currency 25 per cent. less valuable than at the time of the contract. But while these debtors clamoured so loudly for an "equitable adjustment" of contracts grievous to themselves, they never uttered a whisper indicative of their wish to have an "equitable adjustment of those contracts where the change was favourable to themselves. The only instance recorded of any person making an "equitable adjustment" against himself, and paying his creditors according to the true value of the Bank note, was Lord King, who incurred so much resentment for his letter in 1811. It is quite evident that such a one-sided "equitable adjustment" as was proposed by this party was nothing else but robbery. Under the double stimulus of famine prices and a depreciated currency, the rents of land had tripled since the beginning of the war, so that properties which were mortgaged before it, might have been comparatively unincumbered at its close. But the unfortunate mortgagees and annuitants were paid in a fixed amount of depreciated currency, so that, when prices rose to meet the depreciation, they were clearly mulcted. But they had no powerful party to advocate an "equitable adjust-

ment" in their favour; and it is quite clear that no "equitable adjustment" could take place, unless all these payments were included in it

11. There was one perfectly satisfactory argument to shew that the low prices of that year had nothing to do with the act of 1819, namely, that the prices of all sorts of agricultural produce were equally depressed all over the continent of Europe from the same cause. The fluctuations, indeed, on the continent were much more violent than even in England. Wheat, in France, which had risen higher, fell lower. At Vienna wheat which was 114*s.* in March, 1817, fell in September, 1819, to 19*s.* 6*d.*; at Munich wheat fell from 151*s.* in September, 1817, to 24*s.* 5*d.* in September, 1820. The same phenomena were observed in Italy. A similar fall, but not to so great an extent, took place at Lisbon. What could the Act of 1819 have to do with these places? The speech from the throne, in France, very properly attributed the low prices to the enormous abundance of production

12. But not only is it an absolutely certain historical fact, that the Act of 1811 had not the remotest connection with the low prices of 1822, but it is proved by the most overwhelming evidence that it caused no *contraction of the currency at all.* Mr. Turner, a director of the Bank, states—"With regard to the effect of Mr. Peel's bill on the Bank of England, I can state from having been in the direction during the last two years, that it has been altogether a dead letter. It has neither accelerated nor retarded the return to cash payments." And Mr. Tooke shews most conclusively that the amount of the currency, so far as it consisted of Bank of England notes and coin, was much larger in 1822 than it had been in 1819. That this Act caused any **Contraction** of the currency is, therefore, a statement most contrary to the truth. Its only effect was, what Parliament had over and over again solemnly pledged itself to do, to fix a time for the return to cash payments, and such a return to payments in cash would, by its own natural operation, prevent the extravagant issues which the Bank had made during the restriction, which depreciated the note 30 per cent., and robbed

every creditor of one-third part of his property. The Act of 1819 merely restored the Bank to its condition before 1797, and it became subject to the same unerring laws of nature as its directors had confessed it felt before the restriction

13. There is much invidiousness in endeavouring to fasten the responsibility of this Act upon Sir Robert Peel, as if he had had any either of the peculiar merit or blame of passing it through Parliament. The Legislature was solemnly pledged to return to cash payments as soon as the war was over, while he was yet a schoolboy in the junior forms of Harrow. There does not appear to have been any speaker fantastic enough to propose that the Bank should never return to cash payments. The Bank itself, of its own accord, attempted to resume payments in cash, in 1817, and would have succeeded in doing so, if it had not so perversely rejected the principles of the Bullion Report; and if it had not been owing to circumstances which disturbed its management in 1818, cash payments would have been resumed while Peel was still in that unconverted state in which he voted against Horner's resolutions in 1811. So far was he from converting Parliament, that he was himself one of the latest converts, and the Ministry conferred great honour upon him in allowing him, while yet so young, to take such a prominent part, and be the mouthpiece of the unanimous determination of the Legislature

14. By the beginning of 1823 the very inferior stock of 1821 had been chiefly consumed, and the crop of 1822, being of far superior quality, prices began slowly to rise, and the spring of 1823, proving very backward, prices rose rapidly, so that in June wheat stood at 62*s.* 5*d.* These prices, however, tempted the farmers to produce their long reserved stores, and an unusual quantity having thus been brought to market, wheat fell in October to 45*s.* 5*d.*, but the crop turning out worse than was expected, prices rose a little at the end of the year, but they were still 37 per cent. below the "remunerative" 80*s.*, which Parliament had held out to farmers as the point which should be insured to them. It is a favourite theory with many persons that the rise of prices in 1823 was owing to the extension

of country bank issues, in consequence of the Act of 1822 prolonging the term of their existence. Such a supposition, however, is very decisively negatived by the evidence of Mr. Burgess, secretary to the committee of country bankers, before the Committee of 1832 (Report, p. 414). He presented returns from 122 country banks, forming a fair evidence of the whole. Assuming that the issues of each bank were 100 in 1818, the issues of the whole were 12,000 in that year, and the following table exhibits their value up to 1825—

	£	Difference.	£ s. d.	
1818 ..	12,200 ..		—	—
1819 ..	11,991 ..	209 being	1 15 0	per cent. decrease from 1818.
1820 ..	11,487 ..	709 ,,	5 16 10¼	,,
1821 ..	11,352 ..	848 ,,	6 19 0	,,
1822 ..	10,778 ..	1,422 ,,	11 3 1½	,,
1823 ..	10,748 ..	1,452 ,,	11 18 0½	,,
1824 ..	11,640 ..	560 ,,	4 11 9	,,
1825 ..	12,478 ..	278 ,,	2 5 6¾	increase.

Mr. Tooke also shews that during 1823, while the price of wheat was rising, the prices of most other commodities were falling, from which circumstances he very conclusively pronounces that the idea that the variations of the currency had anything to do with the prices in those years to be utterly unfounded*

15. The continued depression of prices of agricultural produce so much below what had been expected, created, no doubt, much distress among those persons who were hampered with obligations they had entered into upon the scale of 1811 and 1812, and several petitions were presented to both Houses of Parliament complaining of it. Mr. Western, not satisfied with the great rebuff he met with in 1822, when the distress was far more severe, again endeavoured to induce Parliament to disturb

* If anything were wanted to shew the utter fallacy of the idea that the contraction of the currency had anything to do with the low prices of 1822, we might refer to the present price of wheat. There are many clamours of a contracted currency at present, and yet the price of wheat is nearly 90*s.* per quarter; in the Edinburgh market it was sold at 104*s.* a few weeks ago. (December, 1855.)

the settlement of 1819. He introduced his motion on the 11th June, 1823. It may be as well to take notice of some of the leading fallacies he brought forward, as they are too often repeated even at the present day. After saying that great variations had taken place in the value of the currency during the preceding 30 years, which was unquestionable, he said—

"It will be admitted that a diminution of value followed the suspension of cash payments by the Bank in 1797; that such diminution continued and increased during the latter years of the war, *and up to the time of Peel's Bill;* and that Peel's Bill, whilst it restored the old metallic currency, gave to it the value which it possessed prior to its suspension. The injustice attendant upon an alteration of a currency in any way cannot be questioned a moment. The injury that was done to creditors by the Act of 1797 (the origin of all our difficulties in regard to currency) is not to be doubted, but my position is that, after a period of twenty-two years, the resumption of the old standard could by no means be an act of justice or retribution. A new currency upon a new standard necessarily ceases to be new in any seuse of the word at some period, and an old one revived again is, to all intents and purposes, new and productive of all the same effects. Is twenty-two years such a period as shall suffice so to establish a standard as to make recurrence to the antecedent as mischievous as the adoption of the new one? This is the important question; and I answer most distinctly, yes; and that justice required us to establish and perpetuate that measure of value which had been so long current, as near as the same could be ascertained"

16. The Marquis of Titchfield supported Mr. Western's motion, but made some caustic remarks upon Mr. Vansittart, and his famous resolutions of 1811, saying that he might possibly be ridiculed for advancing axioms and evident truth—

"This latter danger, however, he should make bold to defy, sheltering himself under the fact that, notwithstanding all the discussion this subject had undergone, it might still be heard any day in society, from persons otherwise intelligent, that, in their opinion, to talk of the depreciation of the currency, must be nonsense, for that they were unable to comprehend how a pound note at one time could differ from a pound note at

another—that a pound note must be a pound note always—that it was impossible that the same piece of paper, with the same characters marked upon it, should be more valuable at one time than at another; and when, above all, the famous resolution of 1811 was recollected, he thought it would be perfectly excusable for him, even in that assembly, said to be so enlightened, to set out with the mathematical axiom that 'a part is less than the whole'—an axiom which now that the late Chancellor of the Exchequer was no longer among them, he apprehended no one would be found hardy enough to dispute. In mentioning the name of that extraordinary person, he much lamented his inability to do justice to the merits of so great a master of reasoning and eloquence, which so confounded the philosophers of 1811, by unfolding to his admiring audience that the old favourite axiom of Euclid was nothing but a popular delusion, that in reality a part might easily be equal to the whole; and that, therefore, there was no reason for doubting that the pound note, which required the assistance of eight shillings to procure a guinea, was equal to the pound note, which required the assistance of but a single shilling of precisely the same value with those of which eight had become necessary. That great man, for his singular merits, he supposed, or, perhaps, for their unworthiness of him, had been taken from them, and bestowed upon another assembly, which, not having had the same practice in finance, it was to be hoped he would long continue to enlighten. He could not, however, be said to have finished his course prematurely, for twelve years before he had obtained an imperishable name, by placing triumphantly on the journals of the House of Commons that astonishing resolution which had deprived Euclid of his ancient and long-acknowledged reputation. He was most anxious to disclaim all personal ill-will towards the late Chancellor of the Exchequer. Indeed, it was impossible he should be under any such impulse, but he would not shrink from confessing that, in a political point of view, he could never hear his name pronounced, much less pronounce it himself, without a feeling something like bitter animosity, because he considered that minister as the author in great part of the calamities in which the landed interest of the country was involved. He believed that few parts of the financial administration of that

period were exempt from much and well-merited censure, but all the other measures were trifling in the scale of mischief compared with that fatal resolution which ministerial influence unfortunately carried in the House of Commons, the effects of which were now helplessly deplored, and which would so long survive the name as well as the administration of those with whom it originated. The mischief of that resolution might be described with perfect justice in a very few words. Its effect was to blind the public to their real situation; thereby both promoting the evil and rendering the sufferers less capable of guarding against it. It assured the public, in the midst of a great and rapidly-increasing depreciation, that no depreciation existed. The Bank, therefore, went on fearlessly adding to its issues, which, of course, increased the evil by increasing the cause of it, and the landlord went on with the cultivation of poor soils, undertaking expensive improvements, fondly imagining that the additional Bank notes he was receiving were additional riches. The landholder, never suspecting that his dealings were virtually in a lower coin, borrowed fearlessly sums vastly larger than he could have dreamed of, that would have staggered his imagination if he had had a suspicion that wheat could ever be at 39*s.* a quarter, for, while he was receiving 140*s.*, he took for granted he might safely calculate upon hard times not bringing him lower, perhaps, than 70*s.* or 80*s.*; and thus the prudent man, even, was induced to borrow what it was clear he had now no chance of paying without ruin. That ever memorable House of Commons told him what they knew to be false, or ought to have known, that the pound note was of full value, when it was in reality depreciated 20 per cent. He borrowed pound notes worth 13*s.* and he was called upon to repay pound notes worth 20*s.*"

17. After developing these ideas still further, he said that in currency *quantity* was everything; for, if forty millions of notes were in circulation at one time, and eighty millions at another, while the transactions of the country remained the same, then two notes would be required to do the duty that one had formerly done; and, therefore, the currency would become depreciated; but if transactions doubled, then the same quantity

of currency would represent the same amount of transactions, and its value would not be altered. He said—

"Economy of money was, by contrivances to spare the uses of it, according to the description of his right honourable friend, by substitutions for the precious metals, in the shape of voluntary credit. Every new contrivance of this kind—and every one improved—had that tendency. *When it was considered to how great an extent these contrivances had been practised in the various modes of* **verbal, book, and circulating credits, it was easy to see that the country had received a great addition to its currency. This addition to the currency would, of course, have the same effect as if gold had been increased from the mines**"

Lord Titchfield then pointed out how an excessive quantity of paper caused a depreciation of it, which was exactly the same thing as a depreciation of the coinage from a deficiency of weight; but he afterwards fell into the extraordinary error of saying, "The Bank notes were depreciated, and became, therefore, in the situation of clipped or debased guineas, which state of the circulation prevailed from 1797 to 1819"

18. This allegation of the great depreciation of the paper currency during the whole interval from 1797 to 1819 is the only one that can afford the smallest ground for attack upon the Act of 1819; but we have shewn, by such overwhelming evidence, that such an idea was the greatest delusion that could be conceived. The Bank note sustained no sensible depreciation for several years after the Restriction Act, and it was not till the great mercantile speculations of 1808-9 that it became seriously so. It did not continue longer than five or six years, and rose so nearly to par in 1816-17 that its depreciation was insensible. If, therefore, Parliament, in 1819, had gone back to the depreciated standard of 1813-14, it would have been the most unjustifiable robbery recorded in history. It would have been infinitely worse than the bankruptcy of any continental nation, such as Austria, Russia, or France, because, when they declared themselves bankrupt, their paper was at a hopeless and irre-

deemable discount, and they had not the remotest prospect of ever bringing it back to par. Their conduct, therefore, was the result of sheer necessity; they were driven to bankruptcy only when they were irretrievably insolvent, but they did not deliberately cheat their creditors *after* their currency was restored to par. The motion was rejected by a majority of 96 to 27, and was the last attempt to tamper with the measure of value

19. The harvest of 1823 was deficient, both in quality and quantity, and prices rose considerably in the beginning of 1824, old wheat being then at 78*s.*; later in the year, however, they declined; but the harvest of 1824 being also inferior, they rallied again. The Bank had for some years been accumulating treasure to meet the anticipated deficiency of the country issues expected to follow the suppression of the £1 notes. When the unhappy change in the policy of the Government took place, this great amount of bullion was rendered comparatively useless, and the country banks began to extend their issues in 1824, and in 1825 they were beyond what they were in 1818. In January, 1824, the bullion in the Bank amounted to £14,200,000. During the preceding year, an adjustment of rents to meet the altered state of prices had taken place, and the old stocks having been gradually worked off, the energy of the people began to revive. The enormous amount of cash in the Bank, for which there was no immediate use, enabled the Government to carry through a great financial operation, the reduction of the interest upon nearly a quarter of the national debt. The Navy 5 per cents. were reduced to 4 per cent. and the 4 per cent. stock to 3½. This vast operation had a very considerable influence in curtailing the incomes of many persons who could ill afford it, to a very inconvenient extent, and prepared them to look out for more profitable investments for their money. Notwithstanding the unhappy and severe distress to the agricultural portion of the community, Mr. Tooke says that the trading and manufacturing interests had never been in a more regular, sound, and satisfactory state than in the interval from 1821 to 1824. At the close of the Session of 1823, the King congratulated Parliament on the flourishing condition of all branches of our commerce and manufactures, and the gradual abatement of agricultural distress

20. At the close of 1824 the seeds of the disasters which ensued in the end of 1825 were sown. The Royal speech opened Parliament with the same strain of congratulation as had closed the preceding Session, and the same congratulations were used at the close of the Session of 1824. Towards the end of that year it became visible that in some of the leading articles of consumption the supply was falling short of the demand, which gave rise to a spirit of speculation, and as, in all similar cases, a few early purchases, which were successful, induced extensive imitation; and at the end of 1824, and beginning of 1825, this had amounted to positive infection, numbers of persons being induced to go out of their own line of business to speculate in articles with which they had no concern whatever, but induced by representations of their brokers to do so in the hopes of realising great and immediate gains

21. Just at this period occurred one of those events which have so frequently lured the commercial world to their destruction. The long contest between Spain and her South American colonies had now finally terminated in favour of the colonies. We have already noticed the great commercial catastrophe brought about in 1810, by the extravagant speculations on the opening of the Brazils to British trade. Precisely the same course occurred in 1824. The recognition of the independence of the South American States and Mexico opened out a boundless field for speculation, and the consumption of British manufactures; and this spirit of speculation was aggravated to the utmost by the visions of countless wealth which was to be extracted from the gold and silver producing countries, and immense schemes were formed for working the mines with British capital. However, the long struggle for independence had inspired the British people with much sympathy for the juvenile republics, and when they wanted to borrow money to support their public credit, the British were only too eager to lend it. It is alleged that £150,000,000 of British capital was sunk in different ways in Mexico and South America.

22. Although the symptoms of a coming mercantile catastrophe were plainly evident in the beginning of 1825, the speech

put into the King's mouth declared the utmost gratification at the continuance and the progressive increase of the public prosperity. "There never was a period," it said, "in the history of this country, when all the great interests of the nation were at the same time in so thriving a condition, or when a feeling of content and satisfaction was more widely diffused through all classes of the British people." The speech of Lord Dudley and Ward was exactly in the same strain. After contrasting the sufferings the nation had gone through, during the last 30 years, he said it was his good fortune to ask their lordships to carry to the foot of the throne their unmixed, and, he hoped, their unanimous congratulations, upon a state of prosperity such as he believed was unequalled in this country, and had never been surpassed in any age or nation. And yet, though the whole debate was in this strain, no sooner was it ended than the Lord Chancellor called the attention of the House to the dangerous extent to which the mania for joint stock companies had gone, and said he would move for leave to bring in a bill to restrain the system. Within seven weeks after that Lord Lauderdale called the attention of the House to the "fury for joint stock companies which had taken possession of the people," and said that the schemes already subscribed for amounted to £200,000,000

23. The following extract from the Annual Register of 1824 contains a sufficient description of the rising of the Joint Stock Company mania. After stating that the "mines of Mexico" was a phrase which opened visions of boundless wealth to the imagination, and how the mania spread from foreign enterprises to home ones, it says—

"In all these speculations, only a small instalment, seldom exceeding 5 per cent., was paid at first, so that a very moderate rise in the price of the shares produced a large profit on the sum actually invested. If, for instance, shares of £100 on which £5 had been paid, rose to a premium of £40, this yielded on every share a profit equal to eight times the amount of the money which had been paid. This possibility of enormous profit, by risking so small a sum, was a bait too tempting to be resisted. All the gambling propensities of human nature were constantly solicited into action, and crowds of individuals of every de-

scription—the credulous and the suspicious—the crafty and the bold—the raw and the experienced—the intelligent and the ignorant—princes, nobles, politicians, placemen, patriots, lawyers, physicians, divines, philosophers, poets, intermingled with women of all ranks and degrees—spinsters, wives, and widows, hastening to venture some portion of their property in schemes of which scarcely anything was known except the name"

As a specimen of the madness of the speculations, we may quote the prices of mining shares. The Anglo-Mexican, on which £10 was paid, were at £43 on December 10th, 1824; on the 11th January, 1825, they were at £150. The Real del Monte, with £70 paid, were at £550 in December, and at £1,350 in January, and others in similar proportions. The prices of most other commodities doubled and tripled

24. Now, what was the conduct of the Bank of England during this period? The bullion which stood above £14,000,000 in January, 1824, was reduced to £11,600,000 in October, 1824. The exchange on Paris had been falling ever since the close of 1823. The last time it was above par was in June, and since then the fall had been continuous. The decrease in bullion had been steady, uniform, and rapid ever since March. Now, when it was known that immense sums were leaving the country, and the exchange falling lower, what did the Bank do? It *increased* its issues. During the month of October, 1824, they were increased £2,300,000. When every consideration of common sense and prudence demanded a rapid *contraction*, when the speculative fever was plainly declared, instead of doing what they could to check it, they added fuel to the flames. But the directors seemed determined to set all the principles of the Bullion Report at defiance; and the drain upon them proceeded with increased severity. In April, 1825, the bullion was diminished by upwards of £4,000,000, and their issues were £3,600,000 higher when they had only £6,650,000 of bullion than when they had £14,000,000

25. The speculative fever was at its height in the first four months of 1825, when it had spent its force and came to an end

in the natural course of things. Vast numbers of persons who had embarked in these wild schemes, with the hope of selling out of them before the inevitable crash came, were now called upon for their subscriptions. Vast quantities of capital having been already absorbed, had the inevitable effect of raising the rate of interest. Successive calls compelled the weaker holders to realise, and, while the calls for ready-money were immediate and pressing, the prospect of returns was distant and uncertain. Accordingly, after May and June, the decline was rapid. The South American loans, and the Mexican mining schemes, proved almost universally total losses. In the meantime, that *slack water*, which Mr. Tooke observes always precedes a great turn in the tide of prices, took place. The increase of commodities which speculation had caused, could no longer be kept from being realised, prices fell as rapidly as they had risen. The obligations of the speculators now became due, and the sale of the commodities had to be forced to meet them. Universal discredit now succeeded, goods became unsaleable, so that stocks which are usually held in anticipation of demand were wholly unavailable to meet the pecuniary engagements of the holders. Merchants who had accepted bills for only half the value of the goods consigned to them, were unable to realise even that half, or even obtain advances, on security of the bills of lading, and even the advances already made were preemptorily called in. The usury laws, which limited interest to 5 per cent., greatly aggravated the distress; nobody would lend money at 5 per cent. when its real value was so much greater; hence, numbers who would gladly have paid 8 or 10 per cent. interest, were obliged to sell goods at a difference of 30 per cent. for cash compared with the price for time

26. The bankers in the country had followed exactly in the steps of the Bank of England. While the fever was raging they had increased their issues and liabilities, by speculative advances on commodities. The persons to whom these advances had been made had no means of repaying them, but the "promises to pay" the bankers had lent them still remained in circulation, and must be met. The bankers foresaw the coming storm, and endeavoured to provide funds to meet it. The Bank of England itself had its

eyes open to the suicidal career it was following in May, and then endeavoured violently to contract its issues. This sudden change of policy only aggravated the general feeling of discredit. During the autumn everything portended the approach of the impending catastrophe. The following table shews the progressive decrease in the bullion in the Bank during 1824 and 1825—

1824		1825	
Jan. 31	£13,527,850	Jan. 29	£9,490,420
Feb. 28	13,800,390	Feb. 26	8,857,730
March 27	13,871,280	March 26	8,152,340
April 24	13,405,550	April 30	6,659,780
May 29	12,887,840	May 28	6,131,300
June 26	12,809,140	June 25	5,482,040
July 31	11,814,720	July 30	4,174,830
Aug. 28	11,763,550	Aug. 27	3,626,570
Sept. 25	11,811,500	Sept. 24	3,496,690
Oct. 30	11,433,430	Oct. 29	3,150,360
Nov. 27	11,323,760	Nov. 26	3,012,150
Dec. 24	10,721,190	Dec. 31	1,260,890

27. The inevitable *contre coup* of the undue expansion of credit in the spring began to press heavily on the country banks in the autumn of 1825. It gradually became severer during the month of November. On the 29th November it was announced in the London papers that Sir William Elford's—a large bank at Plymouth—had failed, and that was immediately followed by the fall of Wentworth and Co., a great Yorkshire firm. By the 3rd December, the panic had fairly set in, and the whole city was thrown into the most violent state of alarm and consternation. On that day (Saturday) some of the directors were informed that the house of Poole, Thornton, and Co., one of the leading city banking houses, was in difficulties, and at a hurried meeting held on the following day it was decided to place £300,000 at their disposal upon proper security. During that week the utmost attention was paid to the position of that house which fought it through the following week, though it was privately known to the governor that, if the storm did not abate, they must fail on the Monday morning. Instead of abating, however, it became more furious than ever on Monday; and Pole and Co. stopped payment, and the ruin of forty country banks which were connected with them was expected

28. The fall of this great banking house was the signal for a general run upon all the London bankers, and three or four more gave way, and spread universal consternation among the country banks, sixty-three of which succumbed to the crisis, though a considerable number paid 20*s.* in the pound, and eventually resumed business

29. From Monday, the 12th, to Saturday, the 17th December, was the height of the crisis in London. Mr. Richards, the Deputy-Governor of the Bank at that time, said—

"On Monday morning the storm began, and till Saturday night it raged with an intensity that it is impossible for me to describe; on the Saturday night it had somewhat abated. The Bank had taken a firm and deliberate resolution to make common cause with the country, as far as their humble efforts would go, and on Saturday night it was my happiness, when I went up to the Cabinet reeling with fatigue, to be able just to call out to my Lord Liverpool, and to the members of His Majesty's Government then present, that all was well; that was, I believe, on the evening of Saturday, the 17th December. Then in the following week things began to get a little more steady, and by the 24th, what with the £1 notes that had gone out and other things, people began to be satisfied, and then it was for the first time in a fortnight, that those who had been busied in that terrible scene could recollect that they had families who had some claim on their attention"

30. As the crisis was evidently approaching at the end of November, the papers discussed the probable policy of the Bank, and it was generally anticipated that it would continue to contract its issues, and let the evil work its own cure by the fall of those houses which had been imprudent in their speculations, and this was the course adopted by the Bank, and to which they adhered as matters grew worse, and they were supported in it by public opinion. On the day after Pole and Co. fell another house of equal magnitude fell, Williams, Burgess and Co. The panic then became universal, and, as the directors thought that they would certainly have to stop payment, they sounded the Government as to a Restriction Act, but the Government absolutely

declined it, and it was resolved that the Bank should pay away its last sovereign. The Mint was kept constantly at work day and night, but it could not supply coin with sufficient rapidity, so that it kept constantly diminishing. On the Saturday the coin in the Bank vaults scarcely exceeded one million, but, by a happy circumstance, when the Saturday evening came the tide receded, and the directors were able to assure the Ministry that all danger was over

31. The great pressure had produced the effect which necessarily results from such circumstances. The great increase in the value of money here had turned the exchanges in favour of the country, the directors expected remittances from Paris, and they fortunately came sooner than was expected. On the Monday following the 19th about £400,000 came from France, and the demand having sensibly abated, the supplies from the Mint fully equalled the sums drawn out of the Bank—or rather exceeded them

32. Mr. Huskisson said afterwards, in the House of Commons, that, during forty-eight hours (Monday and Tuesday, December 12 and 13), it was impossible to convert into money to any extent the best securities of the Government. Persons could not sell Exchequer bills, nor Bank stock, nor East India stock, nor the public funds. Mr. Baring said that men would not part with their money on any terms, nor for any security. The extent to which the distress had reached was melancholy to the last degree. Persons of undoubted wealth and real capital were seen walking about the streets of London, not knowing whether they should be able to meet their engagements for the next day. By this time, however, the exchange had decidedly turned in favour of the country, and on Wednesday, the 14th, the Bank totally changed their policy, and discounted with the utmost profuseness. They made enormous advances on Exchequer bills and securities of all sorts. Mr. Harman said—

"We lent it by every possible means, and in modes we had never adopted before; we took in stock as security, we purchased Exchequer bills, we made advances on Exchequer bills, we not only discounted outright, but we made advances on deposit of

bills of Exchange to an immense amount; in short, by every possible means consistent with the safety of the Bank, and we were not, on some occasions, over nice; seeing the dreadful state in which the public were, we rendered every assistance in our power."

This audacious policy was crowned with the most complete success, *the panic was stayed almost immediately.* On Friday evening, the 16th, the *Courier* said—"We are happy to think that the worst is over, though there are still great demands upon the Bank, particularly from the country." The same paper, on the next day, the 17th, said—"Although public confidence is on the return in the metropolis, and things are resuming their usual course, yet, as might be expected, this has not yet communicated itself to the country." In fact, the London panic was completely allayed in this week by the profuse issue of Bank notes. Between the Wednesday, the 14th, and the Saturday, the 17th, the Bank issued upwards of £5,000,000 of notes

33. The waves of discredit, however, were propagated through the country, and throughout the following week the demand still continued great from the London bankers for their country correspondents. During the course of it, it came to the remembrance of some of the directors that there was a chest of their £1 notes which had never been used. As soon as this was discovered, it occurred to them that they might be used to stay the panic in the country districts, and the discredit of the country bank notes. Upon communicating this idea to the London bankers, it was eagerly approved of, and the sanction of the Government was asked for the experiment. The Government consented, and the notes were sent off to the country bankers without delay, and produced instantaneous relief. At Norwich, when the Gurneys shewed upon their counter so many feet of Bank notes of such a thickness, it stopped the run in that part of the country. By the 24th December the panic was completely allayed all over the country, and the amount of the £1 notes the Bank issued was under £500,000, and by the beginning of 1826 the credit of the banking world was completely restored

34. The circumstances of this famous crisis are the most complete and triumphant examples of the unquestionable truth

of the principles of the Bullion Report, and of Sir Francis Baring, already quoted in Chapter VIII. When the drain of treasure from the Bank was severe and unceasing, and notoriously for exportation, on account of foreign loans, the Bank, with infatuated obstinacy, had increased their issues instead of contracting them, in defiance of the clearest warnings of the Bullion Report. When, after six months' continuance in this fatal policy, they at last reversed their course, and contracted their issues. In the course of the autumn the drain for the exportation ceased, but continued for internal purposes; the demand for gold was entirely to support the tottering credit of the country bank notes. Now, as the country bankers were only too glad to withdraw their own notes, and substitute gold for them, there was not the slightest danger of an increase of Bank of England notes adding to the general amount of paper currency in the country, but just the reverse; consequently, it was just the precise case in which Sir Francis Baring and the Bullion Committee said that it was the duty of the Bank of England to *extend* its issues to support general credit. There was not the smallest danger that an extension of issues would, under such circumstances, turn the foreign exchanges against the country. The character of the demand was declared in the most unmistakeable manner. On Thursday, the 15th, a meeting of merchants and others took place at the Mansion House, when it was stated that Sir P. Pole and Cō. had a surplus of £170,000 after payment of all claims against them, besides large landed property belonging to Sir Peter Pole, and about £100,000, the private property of other members of the firm. Williams and Burgess had enough to pay 40*s.* in the pound. Now if the course which was adopted on the Wednesday had been adopted on the Monday, the whole of that terrific crisis would have been saved. Mr. Vincent Stuckey, one of the most eminent country bankers in the kingdom, says—

"My opinion was that the crisis at that time was brought on by excessive issues; but, when the panic came, country bank paper was brought in for Bank of England, and, therefore, all that was immedtately wanted was an **Exchange of Paper.** I stated, in a letter I wrote upon the subject to the Bank on the 14th of December, 1825, that they would not have to increase

the sum total of circulation, but that all they would have to do was to exchange A for B; and in my letter I recommended them to issue a million a day, which they did; for, otherwise most of the Banks in London, as well as the country, must have stopped."

And, accordingly, they did issue, and all contemporary evidence proves that it was this profuse issue £5,000,000 of paper in a few days that stayed the panic. If they had persevered in the restrictive policy for three days longer, the total and entire destruction of commercial credit would infallibly have ensued. In short, if they had followed the precedents of 1793 and 1797, so strongly condemned by the Bullion Report, all credit would have been destroyed; they followed the principles laid down in the Bullion Report, and the country was saved

35. When the causes of this terrible calamity came to be discussed, there were not wanting many who laid the whole blame to the excessive issues of the Bank, as well as the excessive issues of the country banks. But though it is indisputable that the Bank acted on the most unsound principles, in not contracting its issues when the great drain of bullion for exportation was going on, it is a mere delusion for men to attribute the consequences of their own wild and extravagant mania to the Bank of England, or to any bank. The errors of all the banks put together were trivial compared to the outbreaks of speculative insanity which seized upon all classes. It was not the issues of some Bank notes that led to a respectable bookselling firm to risk £100,000 on a speculation in hops?

36. The Bank had committed many errors before, as serious as those of 1825, without leading to any such disaster. In fact it was the nature of the speculations which men had rushed headlong into that must inevitably have brought about a most terrible calamity if there had not been a Bank note in existence. The speculative mania of 1694 took place before the Bank was in existence; the great South Sea Bubble mania took place when there were no country banks at all, and no one accused the Bank of England, or the London bankers, of having made too profuse issues of notes then; and the great railway mania of 1845-46 took place after it was supposed that the Act of 1844 had

effectually secured the country against the recurrence of similar calamities

37. The bold policy of the Bank of England in that terrible week, in entire accordance with the principles laid down by Sir Francis Baring and the Bullion Report, not only saved a multitude of commercial houses, both banking and trading, but certainly preserved itself from bankruptcy. Though several banks did succumb, the distress was slight, compared to what it would have been if the Bank had persevered in adhering to the policy of 1797. Many houses, it is true, that were aided by the Bank, were only enabled to stagger on for a short time longer, and subsequently failed when their obligations became due; but delaying their fall even for a short time, till the panic had subsided, was of considerable service

38. The worthless character of a great portion of the country paper had greatly aggravated the intensity of the calamity; in fact, it began with them, and the great commercial failures did not take place until after the banking panic had subsided. The Government and the Bank, at last learning wisdom from these repeated convulsions, which seemed to recur periodically, became sensible that it was imperatively necessary to provide a currency of a more solid description for the country, and that the frightful evils of the monopoly of the Bank of England must come to an end

39. Parliament met on the 3rd of February, 1826, and six paragraphs of the speech from the Throne were occupied with the commercial catastrophe, and it said that part of the remedies to be applied consisted in placing the currency and circulating credit of the country on a more firm foundation. Lord King said that the causes of the calamity were partly to be attributed to the Government, in a greater degree to the country banks, and in a still greater degree to the Bank of England monopoly. There was no period of distress during the last thirty or forty years, in which the conduct of that establishment had not been injurious, and in every case aggravated it. It was a most faulty machine. It was impossible that a Bank so incorporated could

do good. If the purpose was to erect an establishment to do mischief, they would erect it on the very principles of the Bank. They would give it a monopoly, remove from it all fear of rivalry, and connect it with the Government. He lamented that the pressure of the country gentlemen and the country bankers had been too powerful to be resisted by the Ministry in 1822, and had forced them to continue the issues of £1 and £2 notes to keep up prices and encourage speculation. The Earl of Liverpool chiefly blamed the excessive issues of the country banks, and said that the small notes must be gradually withdrawn and a metallic currency substituted. He said that he was perfectly satisfied, and had entertained the conviction for years, that the country had grown too large, that its concerns had become too extensive to allow of the exclusive privilege of the Bank of England. Its privileges had operated in a most extraordinary and, as he thought, unfortunate manner for the country. Any small tradesman, a cheesemonger, a butcher, or a shoemaker, might open a country bank, but a set of persons, with a fortune sufficient to carry on the concern with security, were not permitted to do so

40. The Ministry took upon themselves to prohibit any more stamps being issued to the country banks for £1 and £2 notes. The Chancellor of the Exchequer said that those notes were to be deprecated as an infringement of the Act of 1819, which no man could deny was passed, if ever any Act was, with the unanimous approbation of all the parties of which Parliament was composed: an Act which had been solemnly resolved upon as the only measure which could enable the country to meet any future danger, by placing the circulating medium on a permanent and stable footing. No man could insinuate that that Act was not the result of the deliberate conviction of almost every individual of every party in that House. He then detailed the continual evil and insecurity of the small notes, and said that he always had regretted, and still regretted the step taken by Parliament in 1822, which permitted them. The intention of the Government was, therefore, to suppress them as soon as possible in England, and subsequently in Scotland and Ireland. He moved a resolution, that no fresh notes were to be issued by country bankers in England under £5, and that those printed

before the 5th of February, 1826, might be issued, re-issued, and circulated, until the 5th April, 1829, and no longer

41. The opinions expressed in Parliament and the country were, of course, most conflicting, as to the causes of this great catastrophe, but the great preponderance of opinion was adverse to the small note issues. Mr. Baring, who defended the country bankers from the accusations levelled against them, said that their small notes were bad as a permanent system, and they ought to be called in. Even although they might sometimes be of almost indispensable use to the country, still, if the misery which had been caused by their use, among the poorer classes, was taken into consideration, it was a sufficient reason why the nuisance should be abated; and it was his opinion that the House had not got rid of this deluge of paper at the time when it had the power to do so, and that it had not resisted as it ought to have resisted, the importunity of the country bankers. That these small notes should be abolished as soon as practicable

42. Mr. Huskisson described the frightful nature of the panic during 48 hours (Monday and Tuesday, December 12 and 13), and said that it had been truly observed that the Bank, by its prompt and efficacious assistance, had put an end to the panic, and averted the ruin, which threatened all the banking establishments in London, and, through them, the banking establishments and monied men all over the country. The conduct of the Bank had been most praiseworthy, and had, in a great degree, saved the country from a general convulsion. The Bank, through its prompt, efficacious, and public-spirited conduct, had had the countenance, advice, and particular recommendation of the Premier and Chancellor of the Exchequer. He admitted that the commercial distress in Scotland was very great, but that did not prove that the system of Scotch banking did not afford greater securities than the English system, and that it was desirable to introduce it into this country. He then described the wild spirit of speculation which had seized the country, which produced a rise of prices so rapid as had never been equalled. He might mention, as an instance, the price of nutmegs, which rose in one month from 2*s.* 6*d.* to 12*s.* 6*d.* a lb., and speculation in other

spices caused a corresponding rise in their prices. The mania extended equally to other articles of consumption; merchants, traders, shopkeepers, clerks, and apprentices partook equally of the frenzy of vying with each other in their endeavours to secure a monopoly of each article. And this state of things took its rise, not among the wild, insane, and bedlamite schemers, but among those who were considered the sober, steady merchants and traders of the metropolis. And all this took place at a time when money was rapidly leaving the country. Now, if, when it when it was leaving the country so rapidly, it was still hawked about at a greatly lowered rate of interest, that showed there must be something wrong in the currency. And to what would any sober man say such a state of things must come to at last? The Bank, at last, was obliged to provide for its own safety, by narrowing its issues, which checked the spirit of speculation, and as a necessary result, those country banks which had been most rash and immoderate in aiding these speculations by advances were ruined. The ruin of these bad and unstable banks had affected even the stability of the most solvent ones. A general panic ensued, and seven or eight hundred country banks had asked for assistance from the Bank of England. She had 700 or 800 drains for gold suddenly opened upon her. Was this a safe or proper condition to leave the country in? Certainly not. It was his opinion, an opinion not hastily formed, but the result of long and anxious observation, that a permanent state of cash payments, and a circulation of one and two-pound notes could not co-exist. If there were in any country a paper and a coin currency of the same denomination, the paper and the coin could not circulate together, the paper would drive out the coin. Let crown notes be made, and a crown piece would never be seen, make half-crown notes, and no half-crowns would remain in circulation. Allow one-pound notes to circulate, and we should never see a sovereign. One of the great evils they were called on to correct was the excessive issue of paper. This had been the cause of the greatest distress, it had caused the ruin of thousands of innocent persons. Nothing but disgrace and danger could attend the deviation from the true principles of currency, which Parliament had solemnly recognised. If they wished to prove the value of a steady unchangeable currency, they had it in the

example of France, which had twice been invaded by a foreign army, her capital had been taken, and she had been obliged to pay a large sum to foreign countries for corn, but she had a steady metallic currency, and, however much the great contractors might have suffered, the great body of the people had remained uninjured. This was due to the excellent footing upon which the currency of that country was established. If this measure was adopted, every country banker would be obliged to have as great a regard to the exchanges as the Bank of England, and be compelled to provide for his own safety, without leaning upon the Bank in times of danger. Now was the time to withdraw these small notes, when the bankers were smarting under the consequences of their over-issues. They had at present a large amount of gold and bank notes; if they allowed the favourable time to pass by, the small notes would soon be issued again. They had now got the gold in their coffers, and now was the time to provide that it should not be exported again. It would be advantageous to the public to have chartered joint stock banks, established under a proper system, with only a limited liability. This would, no doubt, induce many persons, of great fortune and credit, to take shares in them, but the Bank objected to the extension of limited liability, and had stipulated that the Banks of Scotland and Ireland should not have this privilege. Some thought that the currency should be even more purely metallic than was now proposed, and that notes of a higher denomination should be suppressed. For himself, he entirely differed from Mr. Ricardo, as to the true basis of the currency, and he believed that if Mr. Ricardo, ingenious as he was, had been sole Director of the Bank of England, it would before now have stopped payment. He thought Mr. Ricardo's view of the currency quite erroneous

43. Sir John Newport, as a banker himself, considered the issue of small notes to be most injurious to all connected with them, as affording the most dangerous facilities for extravagant speculation. It had been said that a considerable part of the commerce of the country could not be carried on if these notes were abolished. He was quite willing to accept that alternative, and abandon a portion of our commerce, rather than continue

them. He did not believe that such would be the case. Now was the best time to abolish this pernicious system, when so many of the country bankers had failed

44. Mr. Secretary Peel was convinced that the root of the evil lay in the monopoly of the Bank of England, and that if in the year 1793 a set of banks had existed in this country on the Scotch system it would have escaped the danger it was then involved in, as well as the calamity which had just occurred. In 1793 upwards of 100 banks had failed. In seven years, from 1810 to 1817, 157 commissions in bankruptcy were issued against country bankers; in the crisis which had just occurred 76 failures had taken place. But, from the different ways of making compositions, etc., the number of failures should probably be estimated at four times the number of the commissions of bankruptcy. What system could be worse, or more prejudicial to every interest in the country, than one which admitted of such an enormous amount of failures? Contrast what had been the case in Scotland, under a different system. Mr. Gilchrist, a manager of one of the Scotch banks, had been asked by the committee of 1819 how many failures there had been in Scotland within his recollection, and said there had only been one, that the creditors had been paid 14*s.* in the pound immediately, and finally the whole of their claims. These facts were a strong presumptive proof that the Scotch system, if not quite perfect, was at least far superior to the one existing in England. The present system of country banking was most prejudicial in every point of view. He then described the terrible misery caused by the failure of the country banks. He trusted that the institution of Joint Stock Banks would place the currency on a firmer footing. He most sincerely trusted that the great obstacle to the proposed institutions, the want of a charter, would be removed. He hoped the directors of the Bank of England would seriously consider what advantage they would derive from refusing charters to these banks. He himself could not imagine what benefit they would derive from it; they no doubt had the right to prevent such charters being granted, but he hoped they would refrain from exercising their right. He eulogised highly the conduct of the directors during the late crisis; he could not conceive it possible for any body

of men to have acted better, or to have exercised more judgment, discretion and liberality than they had done—of which he hoped they would give a further instance by not opposing the grants of charters to the proposed new banks. He fully concurred with Mr. Huskisson, that it was impossible to maintain coin in circulation if paper of the same denomination were allowed to circulate along with it. Now was the most favourable opportunity of getting rid of the small notes. It would be impolitic and unsafe to wait the moment of returning prosperity, as the country bankers would be more reluctant to agree to it, and more able to oppose it. To stand gazing on the bank in idle expectation, now that the river was passable, would be an irreparable mistake. The ministerial propositions prevailed by a majority of 222 to 39, and a motion to continue the small notes of the Bank of England was rejected by 66 to 7

45. The chief provisions of the Act (Statute 1826, c. 6) for prohibiting small notes in England are as follows—

1. The Act repealing the Act (Statute 1777, c. 30) which prohibited promissory notes and bills under 20*s.* was repealed, thereby reviving the former Act; but all notes of private bankers stamped before the 5th of February, 1826, or of the Bank of England stamped before the 10th of October, 1826, were exempted from its operation, and were permitted to be issued, re-issued and negociated until the 5th of April, 1829

2. Any person after that date making, issuing, signing or re-issuing any note or bill under £5, was subject to a penalty of £20

3. Any person who published, uttered or negociated any promissory or other notes, or any negociable or transferable bill, draft or undertaking in writing, for the payment of 20*s.*, or above that sum and less than £5, or on which such sum should be unpaid, should forfeit the sum of £20

4. These penalties were not attached to any person drawing a cheque on his banker for his own use

5. All promissory notes under £20, made payable to bearer on demand, were to be made payable at the Bank, or place where they were issued; and as many more places as the issuer pleased

46. When the Government determined on suppressing the small note issue in England, they said it was their intention to extend the measure in a short time to Scotland and Ireland. However much Scotland may have suffered from commercial overtrading, as every commercial country must occasionally do, no banking panic had ever occurred such as those which had so frequently desolated England. As soon as the ministerial intentions were know in Scotland, a great ferment was excited. Sir Walter Scott published three letters on the subject, under the name of "Malachi Malagrowther," which tended much to fan the public enthusiasm, and such an opposition was organised, that the Ministry were obliged to consent to appoint committees of both Houses on the subject. These committees sat during the spring of 1826, and investigated the whole subject of Scotch banking at great length, which had been very little understood in England before that time; and the result was so eminently favourable to the Scotch banking system, that the Ministry abandoned their intention of attempting to alter it. The evidence and reports of these committees will be noticed further on

47. The year 1827 is memorable as the era when the principles of the Bullion Report were at length acknowledged to be true, and professedly adopted by the Bank. Mr. William Ward stated in 1832 that there was not a single person in the Bank but who admitted that its issues should be regulated by the Foreign Exchanges and the bullion market, or disposed to act in opposition to it. That in 1819 the directors had forwarded a resolution to the House of Commons, denying that the exchanges were to be regarded in regulating the issues. Subsequently, however, to that year, opinions became changed, and they found the merits of the case such as they really were. He himself had always been convinced of the truth of Mr. Horner's principle, and, from his being connected with the exchanges, had many opportunities of observing the practical truth of it. The Bank Directors, however, were not convinced of it, because they found in practice that the exchanges did not follow the issues of the Bank. But the truth was that they neglected to consider the country issues, and it was only in 1819 that they obtained a correct account of the issues of country banks; when that was

got it was found that, taking the Bank and the country issues together, the principle was shown to be quite correct. The observation of these facts had gradually convinced the directors, and, in 1827, he thought the court ripe for expunging the resolution of 1819, and it had accordingly been done. And, in 1832, there was not a single director who disputed its truth

48. Although the Act of 1775 had forbidden notes under £5 to be issued in England, it did not prohibit the circulation of the Scotch £1 notes in England, and they had always circulated in the districts adjacent to Scotland, and even as far South as York. When the English £1 notes were suppressed, it seemed naturally to follow that the circulation of the Scotch notes in England should be forbidden. But the districts in which they had always circulated, were as unanimous as Scotland itself against the measure. In 1828, the Ministry brought in a bill to restrain the circulation of Scotch bank notes in England. Sir James Graham presented a petition from the borderers, deprecating, in the most earnest terms, the withdrawal of the Scotch notes to which they had been so long accustomed. For seventy years, they said, they had possessed the advantage it was now sought to deprive them of—the advantage of the Scotch currency. Seven-eighths of the rents of estates were paid in the paper currency of Scotland, and no loss had been sustained in consequence of it. After a debate of two nights, the motion was carried by 154 to 45. The Act (Statute 1828, c. 65) provided that after the 5th of April, 1829, no corporation or person whatever should publish, utter, negotiate, or transfer in any part of England, any promissory note, draft, engagement, or undertaking in writing, payable to bearer on demand, for less than £5, or upon which less than £5 remained unpaid, which should have been made or issued, or purport to have been made or issued, in Scotland or Ireland, or elsewhere out of England, under a penalty of not less than £5, or more than £20. The same exemption as to cheques as in the former Act

49. In 1832, during the crisis of the Reform Bill, a run upon the Bank took place, which lasted for about a fortnight; but, as it was merely from political feeling in London, and did not extend into the country, no serious result ensued

50. The Bank Charter expired at the end of one year's notice, to be given after the 1st August, 1832, and this time the Bank had done no such services to the Government as to be in a position to demand from it a renewal of its monopoly several years before it expired. Moreover, these exclusive privileges, as Lord Liverpool said, in 1825, were out of fashion. Many great monopolies were now on the eve of breaking up, and the public mind was more roused and enlightened on the subject of banking from the discussions caused about the severe distress of 1825. Before taking any steps towards a renewal of the charter, the Government determined to have an inquiry before a Secret Committee of the House of Commons, which was appointed on the 22nd of May, 1832, and consisted of the following members—

Lord Althorp, Sir Robert Peel, Lord John Russell, Mr. Goulburn, Sir James Graham, Mr. Herries, Mr. Poulett Thompson, Mr. Courtenay, Colonel Maberley, Sir Henry Parnell, Mr. Vernon Smith, Mr. John Smith, Mr. Roberts, Sir M. W. Ridley, Mr. Attwood, Sir J. Newport, Mr. A. Baring, Mr. Irving, Mr. Warburton, Mr. G. Philips, Lord Morpeth, Mr. Morrison, Mr. Heywood, Lord Ebrington, Sir J. Wrottesley, Mr. Lawley, Mr. Cavendish, Alderman Wood, Mr. B. Carter, Mr. Strutt, Mr. Stanley, Alderman Thompson

51. The Committee was appointed during the height of the political excitement attending the passing of the Reform Bill, and sat for some months, and did not make any report till the end of the Session. The inquiry was extremely incomplete. Many of the most interesting subjects connected with it were scarcely touched upon. But the close of the Session made them report the evidence to the House as far as it had gone. It was expected that a new committee would have been appointed in the new Parliament to continue the inquiry, but the Government in the meantime made up their mind as to the changes they intended to make in the Bank monopoly, and dispensed with any further inquiry

52. Although the inquiry was left in a very incomplete state as to many branches of the subject, the evidence given embraced many interesting points. The most important of which were,

the rules adopted by the Bank for regulating their issues—the expediency or the contrary of publishing their accounts—the expediency or the contrary of establishing Joint Stock Banks, or of having one or more Banks of Issue in the metropolis—the causes of the panic of 1825, and the action of the Bank during that period—the advantages or the contrary of making Bank notes legal tender, and the effects of the usury laws on commerce

53. The great truths regarding the regulation of a paper currency, which had been approved of by the Bullion Committee, were now unanimously recognised by the Directors, and Mr. Horsley Palmer, the Governor of the Bank, being asked by what principle, in ordinary times, the Bank was guided in the regulation of its issues, said, that in a period of full currency, and, consequently, with a par of exchange, the Bank considered it desirable to invest two-thirds of its liabilities of all sorts in interest-bearing securities, and one-third in bullion. The circulation of the country being then regulated by the action of the foreign exchanges, the Bank was extremely desirous to avoid using any active power of regulating the circulation, but to leave that entirely in the hands of the public. The action of the public was fully sufficient to rectify the exchanges without any forced action of the Bank in buying or selling securities. He thought it desirable to keep the securities very nearly at the same amount, because then the public could always act for themselves in returning notes for bullion for exportation when the exchanges were unfavourable, and if there was a great influx of gold, the Bank could always re-assume its proportion by transferring part of the bullion into securities. He considered that the discount of private paper was one of the worst means which the Bank could adopt for regulating its notes, as it tended to produce a very prejudicial extension of their notes. He condemned strongly the practice of the Bank during the restriction with respect to the extensive discounts of mercantile paper at 5 per cent. when the market rate was much higher, which necessarily led to an excessive issue

54. The great majority of the witnesses were in favour of a publication of the accounts of the Bank, as tending to inspire greater public confidence than the mystery in which they were

then enveloped, and also acting as a check upon the directors themselves. Almost all the witnesses were against the establishment of Joint Stock Banks in London, as they would tend to injure the private bankers. Considering the ideas of the age, when class interests were supreme, we need not be surprised at this unanimity of feeling; nor that it rather escaped the attention of the witnesses that it was not the interests of the private bankers, however respectable they were, that was the paramount consideration, *but what was best for the public good.* And still more decidedly were the witnesses opposed, with scarcely an exception, to the establishment of any new joint stock banks of issue in London. There was a very prevalent feeling that Bank of England notes should be made legal tender, as a means of allaying a drain on the country bankers for gold during a panic

55. It was at this time that we may date the first prominent appearance of the great modern heresy, that bills of exchange and cheques form no part of the circulating medium or currency. As this unhappy doctrine, however, was much more emphatically pronounced a few years later, we may defer considering it to that period. The committee pronounced no opinion of their own on the various points brought out in the evidence

56. The harvest of 1832 was unusually abundant, which caused a great depression of the price of all sorts of agricultural produce towards the end of 1832, followed, of course, by "agricultural distress." This was brought before the notice of Parliament in the speech from the throne at the opening of the Session of 1833, and a committee was appointed to inquire into it. This distress afforded the irreconcileable enemies of the Act of 1819 another opportunity of attacking it. Mr. Attwood moved for a committee to inquire how far the present distress was connected with the monetary system. Lord Althorp immediately met the motion by an amendment, that any change in the monetary system which would have the effect of lowering the standard of value was inexpedient, which, after a debate of three nights, was carried by a majority of 304 to 49

57. On the 31st May, 1833, Lord Althorp moved a series of

resolutions for the renewal of the Bank Charter, one of which was, that so long as the Bank was bound to pay its notes in gold, bank notes should be declared legal tender, except by the Bank itself. Several members wished for further delay to consider the resolutions, as the Session was nearly at an end; but Sir Robert Peel was decidedly of opinion that the House would be abandoning its duty if it consented to postpone the question. He was of opinion that it was desirable to continue the privileges of the Bank, and that there should be but one bank of issue in the metropolis, in order that it might exercise an undivided control over the issue of paper, *and give facilities to commerce in times of difficulty and alarm,* which it could not give with the same effect if it were subject to the rivalry of another establishment. He resisted, at great length, the proposition for making bank notes legal tender, as a departure from the principle of the Act of 1819, and the true principles that should govern a paper currency. It was decided, by a majority of 316 to 83, to proceed with the consideration of the resolutions. The plan of making bank notes legal tender gave rise to much difference of opinion, but was carried by 214 to 156

58. We have already seen that the public had attempted, at various times, to form rival banking companies to the Bank of England, and in 1709 and 1742, the Bank Acts had been framed to stop up various loop-holes which had been successively discovered. In 1742, the phraseology used had been supposed to be quite effectual for that purpose. At that time, the custom of giving *notes* payable to bearer on demand to their customers in return for deposits, was considered so essentially the fundamental idea of banking, that to prohibit the giving of these notes was deemed an effectual bar upon carrying on the business of banking. But in process of time—about 1793—the London bankers discontinued issuing notes payable to bearer on demand. The Act of 1742 was considered to be so effectual a bar upon establishing banking companies in general, that for a long time it escaped public observation that the method of doing business by way of cheques enabled banking companies to elude the wording of the Act of 1742. In 1796, when, in consequence of the restrictive measures of the Bank of England, much distress was felt in

London from the want of a circulating medium, an association of merchants and bankers was formed, for the purpose of providing a circulating medium which should not infringe the privileges of the Bank; the question was considered by them, in what the Bank's privileges of exclusive "banking" did consist, and they determined, "The privilege of exclusive banking enjoyed by the Governor and Company of the Bank of England, as defined by the Acts of Parliament under which they enjoy it, seems to consist in the power of *borrowing, owing, or taking up money on their bills or notes payable on demand.*" About the year 1822, some writers detected this flaw in the monopoly of the Bank, and maintained that a joint stock bank of deposit was no infringement of the Charter, and that such banks might be formed, and carry on a very successful business without issuing notes at all, but by merely following the practice of the London bankers by adopting cheques. Though this idea was much discussed in pamphlets at that period, no practical result ensued

59. It is somewhat remarkable that the discovery should have been allowed to lie unfruitful for so long a period. When the Government first entered into negotiation with the Bank in 1833, concerning the terms of the renewal of the Charter, they were persuaded, as well as the whole mercantile community, that the monopoly forbade banks of any description whatever, with more than six partners, being formed. In the course of the negotiation, however, this was brought under the notice of the Government, who took the opinion of their law officers on so important a point. The opinion of the Crown lawyers was that the clause did not prohibit joint stock banks of deposit being formed. The directors and proprietors of the Bank were much disturbed at finding this flaw in their monopoly, and requested the Government to have it rectified; but Lord Althorp said that the bargain was that their privileges should not be diminished, but he would not agree to any extension of them. In order to remove all doubts upon the subject, the Solicitor-General brought up a clause, by way of rider, declaring the right to form such banks. He said that the basis of the contract with the Bank was, that they were to enjoy whatever monopoly they already possessed, but nothing beyond it. He had examined the case with the utmost

care, and there was no pretence for saying that such banks were an encroachment upon the monopoly of the Bank. The Bank, as originally founded, was a *bank of issue*, and the monopoly first granted in 1697 must be held to refer only to banks *ejusdem generis*. Such had been the uniform language of all the subsequent Acts. The clause upon which their monopoly rested was strictly confined to the issue of paper money. Banks of deposit were lawful at common law, and it rested with those who said it was forbidden, to point out the Act which prohibited them

60. The chief provisions of the Act were as follows (Statute 1833, c. 98)—

1. The Bank was continued as a Corporation, with such exclusive privileges of banking as was given by the Act, for a certain time, and on certain conditions, during which time no society or company exceeding six persons should make or issue in London, or within sixty-five miles thereof, any bill of exchange or promissory note, or engagement for the payment of money on demand, or upon which any person holding the same may obtain payment on demand. But country bankers might have an agency in London for the sole purpose of paying such of their notes as might be presented there

2. For the purpose of removing any doubts that might exist as to what the exclusive privilege of banking which the Bank of England enjoyed consisted in, it was enacted that any body politic or corporate, or society or company, or partnership, of whatever number they consisted, might carry on the business of banking in London, or within sixty-five miles thereof, provided that they did not borrow, owe, or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges of the Bank of England

3. All the notes of the Bank of England, payable on demand, which should be issued out of London, should be payable at the place where they were issued

4. Upon one year's notice, to be given within six months after the expiration of ten years from the 1st day of August, 1834, and repayment of all debts due by Parliament to the

Bank, its privileges were to cease and determine at the end of the year's notice

5. So long as the Bank paid its notes on demand in legal coin, they were declared to be legal tender of payment, except by the Bank itself, or any of its branches. No notes not made specially payable at any of the branches were liable to be paid there; but the notes issued at all the branches were to be payable in London

6. Regulations about publishing its accounts, and exemptions of bills and notes not having more than three months to run, from the usury laws—these being altered now, need not be detailed

7. The public were to pay off one-fourth part of the debt due to the Bank, and the proprietors might reduce the capital stock of the Bank by that sum if they chose

8. In consideration of these privileges, the Bank was to give up £120,000 a year, from the sum they received for managing the public debt

61. For several years after the renewal of the Bank Charter the harvests were unusually abundant, which caused all sorts of agricultural produce to be ruinously depressed. Wheat fell continuously through 1834 and 1835, till, in the last week in December, 1835, its price was 36*s.* the imperial quarter. As all agricultural contracts were framed on the expectation that wheat would not be much less than 70*s.* the quarter, this long-continued depression produced the most severe distress. At the same time, however, all the manufacturing interests were in a state of unexampled prosperity from the abundance and cheapness of food. The long-continued low price of corn caused less to be sown in 1835, and the spring of 1836 was unfavourable. These causes combined to raise the price of wheat in 1836, and the harvest time being wet and cold, caused the price to rise to 61*s.* 9*d.* in the autumn

62. The state of extraordinary prosperity enjoyed by the commercial interests during 1833-34-35 gave rise to an immense amount of speculation and dabbling in foreign loans, as if people seemed incapable of learning wisdom from the experience of 1825. The unexpected success of the first railway gave rise to a con-

siderable amount of speculation in the formation of railways. An immense extension of the joint stock banking system economised capital to a great degree, and afforded the means of the most fatal extension of credit. On the 14th August, 1834, Lord Wharncliffe called the attention of the Ministry to the prodigious extension of joint stock banks and their branches, and the insufficient capital they were trading with. The important subject of joint stock banking was brought before the House of Commons in 1836, and a Committee was appointed to inquire into it. The Committee sat during the Session and made two reports, which will be noticed in a subsequent chapter. This fever of speculation reached its acme in the spring of 1836. Mr. Poulett Thompson, President of the Board of Trade, said in the House of Commons on the 6th of May, 1836—

"It is impossible not to be struck with the spirit of speculation which now exists in the country, but I believe that there is a great difference in the state of things and what took place in 1825. The spirit of speculation was then turned to foreign adventure of the most extraordinary description; but now speculation is directed to home objects, which, if pushed too far, may be very mischievous, though the consequences may not be quite so mischievous as in 1825. But really, on turning to any newspaper, or any price current, and observing the advertisements of joint stock companies upon every possible subject, however unfit to be carried on in the present state of society, every man must be struck with astonishment at the fever which rages at this moment for these speculations. I felt it my duty some time ago to direct a register to be kept, taking the names merely from the London and a few country newspapers, of the different joint stock companies, and of the nominal amount of capital proposed to be embarked in them. The nominal capital to be raised by subscription amounts to nearly £200,000,000 and the number of companies to between 300 and 400. . . . . The greater part of these companies are got up by speculators, for the purpose of selling their shares. They bring up their shares to a premium, and then sell them, leaving the unfortunate purchasers, who are foolish enough to invest their money in them, to shift for themselves. I have seen also, with great regret, the extent to which joint stock banks have sprung up in different parts of the country. I believe, indeed, that great good has arisen from

joint stock banks, but the observations I have made with regard to other companies are equally applicable to many of the joint stock banks that are springing up in different parts of the country, and the existence of which can only be attended with mischief"

63. We have seen that since the Bank of England had adopted the principles of the Bullion Report in 1827, the method they adopted of carrying them into effect was to keep their "securities" as nearly as possible even, and to keep their bullion and cash equal to one-half the "securities;" the bullion, cash, and securities being together equal to their "liabilities." Having got the Bank into this position while the exchanges were at par, to throw any action either of increase or decrease of their issues of notes entirely upon the public, either by means of the foreign exchanges or by an internal extra demand for gold. The Bank was got into this normal condition in October, 1833, when its "liabilities, *i.e.*, the issues and the deposits, were £32,900,000, the "securities" were £24,200,000 and the bullion £10,900,000. Some transactions with the East India Company and speculations in South American stock occurred to derange these proportions in 1834, and caused an export of specie; but in 1835 the foreign exchanges became favourable and the drain was arrested. But in the meantime the Bank had totally lost all power of preserving the proportion between the bullion, securities, and liabilities it had professed to adhere to. The following table, taken at intervals, will exhibit this very clearly—

	Liabilities.		
1 Oct.,	1833, £30,937,000	Securities,	£22,640,000
		Bullion,	£10,527,000
11 Mar.,	1834, £31,372,000	Securities,	£24,777,000
		Bullion,	£8,901,000
15 July,	1834, £37,554,000	Securities,	£31,735,000
		Bullion,	£8,298,000
9 Sept.,	1834, £31,058,000	Securities,	£26,643,000
		Bullion,	£7,010,000
13 Jan.,	1825, £33,071,000	Securities,	£29,165,000
		Bullion,	£6,608,000
5 May,	1835, £29,417,000	Securities,	£26,179,000
		Bullion,	£5,951,000

This was the lowest point which the amount of bullion reached, and the drain was arrested. The above table shews how totally deranged the proportions were to what the directors considered to be a proper position for the Bank. From that time bullion continued to flow in, till, in March, 1836, it slightly exceeded eight millions; but, even then, the securities were three times the bullion, instead of twice, as they ought to have been

64. The amount of bullion in the Bank was at its height in March, 1836, and then began steadily to decline again; in the middle of July it had fallen below six millions, when the Bank thought it was necessary to endeavour to stop it, and it raised the rate of discount to 4½ per cent. This had no effect, however, in stopping the demand for discount. In September the bullion barely exceeded five millions, and the Bank raised the rate of disconnt to 5 per cent. Now the bubbles blown in the preceding year and spring of 1836 were fast bursting on all hands

65. The drain on the coffers of the Bank proceeded at a rapid rate, both from external and internal causes. President Jackson had determined that the Charter of the National Bank of the United States, which expired in 1836, should not be renewed, and that the currency of that country should be placed on a sounder footing than it had hitherto been, by forming a sound metallic basis. Operations to effect this purpose soon commenced. Immense quantities of American securities of all sorts were imported into England, and negotiated for the purpose of remitting the specie to America. The improperly low rate of discount in this country, favoured by the inordinate multiplication of Banks, enabled a great quantity of these securities of various descriptions to be realized in England, and the cash was remitted to America

66. The joint stock banks had been blowing the bubble of credit to the utmost tenuity, by re-discounting most of the bills which they discounted. This practice largely increases the proportion of paper currency compared to the metallic basis, and, of course, adds to any peril in times of discredit. The Bank of England, at length, but too tardily, as has almost invariably been the case, awoke to the impending danger, and determined to

strike a blow at the distended state of credit. It not only raised the rate of discount to five per cent. in August, but absolutely refused to discount any bills indorsed by any joint stock bank of issue. This was a great blow at the great amount of American securities afloat in the country, as most of those bills had been purchased by the joint stock banks, and re-issued with their indorsement upon them

67. In the autumn of 1836, the symptoms of the coming storm were very apparent, especially in Ireland. One very large joint stock bank, the Agricultural and Commercial, was known to be in difficulties early in the autumn, and it made several applications to the other joint stock banks in Ireland, and England, and Scotland, for assistance, which they all refused. It also made a call upon its shareholders which was not responded to. The other Irish banks, foreseeing a stoppage of the Agricultural and Commercial, had been laying in a stock of gold, to meet the run which would necessarily follow the failure of a bank with so many ramifications. The sum in gold which the Irish banks laid in, to provide for the run, was estimated to be not less than £2,000,000, all of which came from the Bank of England. Much of this was required on account of the extraordinary differences of opinion that were given by the most eminent Irish counsel, as to whether the Bank of England notes were tender in Ireland. Three very eminent lawyers held that they were legal tender, and three equally eminent held that they were not. The Bank of Ireland itself thought that they were not, and were still less inclined to make the experiment when there was such a difference of opinion among the lawyers. The other banks followed the example of the Bank of Ireland, and provided gold

68. The catastrophe that had been foreseen took place on the 14th of November, when the Agricultural and Commercial Bank stopped payment, which was immediately followed by a general run upon all the Banks in Ireland; but it was well met, from the care which had been previously taken to provide specie. So great was the state of discredit, that even the Bank of England notes were at a heavy discount in Dublin. The Bank of Ireland would only take them in very small quantities from their customers

at a discount of 2*s.* 6*d.* each. During all this time, the diminution of bullion in the Bank of England was going on rapidly. At the beginning of October, it had £5,035,000 in bullion, to meet £29,869,000 of liabilities; at the end of November its liabilities were £30,941,000, and its bullion £3,640,000. During December its bullion slightly increased, and in January diminished again. In November, the Northern and Central Bank, with its head office in Manchester, and thirty-nine branches in the manufacturing districts, became seriously embarrassed, and applied to the Bank of England for assistance, which the Bank at first refused; but upon consulting the leading bankers in London, their opinion was that the stoppage of so extensive a concern in the manufacturing districts would very probably bring on a general panic. The Bank, therefore determined to advance the sum of £500,000, to enable it to meet its engagements, which upon subsequently discovering that these were much more extensive than had been at first represented, was further increased to the sum of £1,370,000. Early in January, a London banking house applied for assistance to the Bank, and, on the other London bankers giving their guarantee to the Bank of England, it made advances sufficient to enable that house to meet its engagements. The difficulties attending the American houses, both in London and Liverpool, became now so pressing, that they also were obliged to apply to the Bank. Persons were appointed to look into their affairs, who represented that, if assistance were given them to meet their outstanding engagements, they would ultimately prove solvent. As an additional reason for granting this assistance, it was stated that if these American houses were permitted to stop payment, their concerns were so vast, and so extended throughout the north of England, that a general destruction of credit would ensue. After full consideration, the Bank determined to attempt to carry these houses through their embarrassments, and for this purpose, it advanced the enormous sum of £6,000,000. This great operation was, however, successful, though the final liquidation of the account was retarded by the great prostration of American credit in 1839. The advances made to the banking interests in England were all repaid, principal and interest, with one very trifling exception. The Bank thus followed, for a second time, the principles laid down by the Bullion Report and there

can be no doubt averted a calamity only second in magnitude to the catastrophe of 1825

69. The assistance of the Bank was only intended to be of a temporary nature, to give time for the gradual withdrawal of the great mass of unsound paper from circulation. This having been effected to a large extent, the result followed which always has been the case, and always must be the case—a great influx of gold, to fill the vacuum caused by the great annihilation of this paper currency. During the whole of 1837 bullion rapidly flowed into the Bank; and in December it reached the sum of ten millions and a half. The position of the Bank on the 13th of March, 1838, was as follows—

Liabilities.	
£31,573,000	Securities.....£21,046,000 Bullion.....£10,527,000

Thus, after a long period of nearly five years, the Bank was at length brought back again into what the directors had laid down for themselves as the normal position; and it enabled credit to pass through a crisis which would have been tenfold more severe if it had not been met by that "judicious increase of accommodation" which the Bullion Report declared was the proper remedy for a temporary failure of credit

70. From 1832 to 1837 there had been a series of seasons of remarkable abundance. For several years a series followed of extreme scarcity. The crop of 1838 was the worst that had been known since 1816; that of 1839 was scarcely, if at all, better. This great deficiency rendered it necessary to import foreign corn to the value of £10,000,000, a considerable portion of this required to be remitted in specie. But, just at this period, a number of other concurrent causes happened to create a great demand for gold for foreign countries. During the preceding years America, France, and Belgium had carried the extension of paper credit to most extravagant lengths. In America the fatal system of issuing bank notes upon "property" and "securities" had been carried to a length almost worthy of Law. In France and Belgium joint stock banks had been extensively formed. This great extension of paper currency had the very same effect

as the over issue of paper had in England ; it drove bullion out of these countries, and was one of the causes which, together with the fortunate destruction of the extravagant paper credit in England, in 1837, caused such an influx of gold in this country up to March, 1838. But, in this latter year, these bubbles burst. In the autumn of 1838 the Bank of Belgium failed, and a severe run upon the banks at Paris took place. This revulsion of credit, and extinction of paper issues in those countries, caused a current of bullion to set in towards them which came from the Bank of England

71. In the beginning of 1838, when the bullion in the Bank had been rapidly increasing for several months, the commercial world thought it was time for the Bank to make use of the treasure in its vaults. It accordingly reduced the rate of discount from 5 to 4 per cent., and was induced to send over one million of sovereigns to America, the exchanges being favourable to that country in consequence of the destruction of paper, to assist the American banks to resume payments in cash

72. The bullion in the Bank kept a pretty even amount till December, 1838. On the 18th of that month the liabilities were £28,120,000, the securities £20,776,000, and the bullion £9,794,000. From this date a rapid and steady drain set in, which continued with unabated severity till October, 1839. When the Bank lowered its rate of discount to 4 per cent. in February, 1838, the market rate had fallen still lower, and in summer was about 3 per cent. From that time forward it began to rise, and at the end of the autumn was level with the Bank. While everything was symptomatic of an impending drain of bullion, the Bank on the 29th of November, suddenly lowered its rate to 3½ per cent. for advances upon bills of exchange, East India bonds, Exchequer bills, and other approved securities. The market rate of interest was now decidedly higher than that of the Bank, and the consequence was an immediate pressure for accommodation on the Bank. The securities which, in December, 1838, were £19,536,000, mounted up in January, 1839, to £27,594,000, and the bullion fell from £9,522,000 to £8,826,000. The following table will exhibit clearly the progressive diminution of bullion—

	Liabilities.	Securities.	Bullion.
18 Dec., 1838	£28,120,000	£20,776,000	£9,794,000
1 Jan., 1839	28,156,000	22,377,000	9,048,000
15 Jan. „	30,305,000	24,529,000	8,336,000
12 Feb. „	26,939,000	22,628,000	7,047,000
12 March „	26,088,000	22,143,000	6,580,000
9 April „	29,039,000	22,173,000	5,213,000
30 April „	26,475,000	24,536,000	4,455,000
14 May „	25,711,000	24,098,000	4,117,000

73. Up to this time the Bank seemed to have been struck with actual paralysis. Notwithstanding the continuous rise in the market rate of interest, and the unmistakeable drain of bullion that had set in, they, on the 28th of February, issued a notice continuing the same rates on the same securities as in the previous November. And it was not until the 16th May that they suddenly raised it to 5 per cent. The above figures show how completely the directors had belied their own principles of keeping their bullion at one-third of the liabilities. The market rate had advanced considerably more rapidly, so that the Bank was yet below it. The drain still continued. On the 28th May the bullion stood at £3,910,000, and the liabilities upwards of twenty-four millions and a half; but the directors seemed so utterly blind that, on the 30th May, the time of shutting the books for the dividends, they still offered advances at 5 per cent. till the 23rd July on the same securities as have been last mentioned. However, on the 20th June, they at last became alarmed, and issued notices that the rate of discount would be $5\frac{1}{2}$ and no securities would be received except bills of exchange

74. On the 16th July the liabilities were £28,860,000, the securities £28,846,000, and the bullion £2,987,000. The Directors at last awoke to the fact that the Bank was rapidly drifting into bankruptcy. On the 13th July they gave notice that they would be ready to receive tenders for the purchases of some terminable annuities, but the minimum price they fixed was so high that no sale took place.

75. Besides raising the rate of discount in May, the Bank

sold public securities to the amount of £760,000, and it authorised bills upon Paris to be drawn to its account to the amount of £600,000. These measures had the effect for a short time of arresting the drain. But when these bills came to maturity the Bank was in no better position to meet them, and it then became necessary to create a larger credit in Paris to meet the first. The position of the Bank was, of course, well known to all the foreign dealers in exchange, and in June it was generally expected abroad that the Bank could not maintain payments in specie. In consequence of this, all long-dated bills upon this country were sent over for immediate realisation, and the values withdrawn as speedily as possible. To counteract this drain, as well as to meet the payments of the first credit which had been created on behalf of the Bank, it was obliged, in July, to organise a measure of a much larger nature. Messrs. Baring entered into an agreement with twelve of the leading bankers in Paris, to draw bills upon them to the amount of upwards of £2,000,000; and as each of them had only a fixed credit at the Bank of France, that Bank agreed to honour their acceptances in case they should be presented there and exceed their usual limits. An operation of a similar nature to the amount of £900,000 was organised with Hamburg. As soon as any bill was drawn on account of one of these operations, the Bank transferred an equal amount of the annuities it had offered for sale in July to two trustees, one for the drawers and the other for the acceptor. Out of this second credit the bills which fell due from the creation of the first credit were paid. This measure had the effect of gradually arresting the drain of bullion, which reached its lowest point in the week ending the 2nd September, 1839, when it was reduced to £2,406,000. From that time it began slowly to increase; and in the last week of the year it stood at £4,532,000, the liabilities being £23,864,000, and the securities £22,098,000. The operations ensuing from this foreign credit extended over nine months, from July, 1839, to April, 1840, and the highest amount operated upon was in November, 1839, when it was £2,900,000

76. The figures we have quoted, shewing the proportions between the bullion and the liabilities of the Bank, are sufficient

to shew either that there was some natural impossibility in adhering to the rule the directors had laid down for their guidance in 1832, or that they had not sufficient firmness to contract their securities in time of pressure to maintain it. The flagrant disproportion which these figures had assumed, which would scarcely be safe in an ordinary banking house, but which were to the last degree perilous in the Bank of England, which was known to be the last resource of every bank in the kingdom in times of difficulty, turned the attention of writers to devise some plan by which, if possible, the Bank should be compelled to maintain the proper proportion between bullion and liabilities. Colonel Torrens appears to have been the originator of the idea, which was eventually adopted, of dividing the Bank into two distinct departments, independent of each other; one for the purpose of issuing a regulated amount of notes, and the other for carrying on the business of banking. This plan was first started in 1837, and was much canvassed and discussed by several eminent writers on the subject, such as Mr. Tooke, Mr. Norman, and others; and we shall see was afterwards one of the most prominent features in Sir Robert Peel's Act of 1844, and we shall reserve to its proper place the account of the plan which was ultimately adopted. The great commercial and monetary crisis the country had passed through within the few preceding years, attracted much public attention, and several petitions were presented to Parliament; and in March, 1840, the Government determined to institute an inquiry into the whole system of paper issues. On the 10th of that month the Chancellor of the Exchequer moved for a Committee for that purpose. He reminded the House that the Bank Charter would terminate in 1844, and he thought it expedient that they should not postpone inquiry into the subject till the last moment. That whatever might be the difference of opinion among the most intelligent men, as to what part of the difficulties they had gone through were to be attributed to the Bank of England, or other Banks, still they were very strongly of opinion that the present system required revision and alteration. Leaving out of consideration former transactions, the difficulties and embarrassments which the country had gone through, within the last few years, had led the most important bodies, and the largest of the manufacturing

towns, to make complaints—in calm and temperate language—and to express an anxiety that the House should institute an investigation into their complaints, and endeavour to provide adequate remedies. The chief points of interest connected with the report and evidence are—

1. That the principle propounded in 1832 for the management of the Bank, for the purpose of conforming with the principles of the Bullion Report was totally condemned

2. The great modern heresy, that bills of exchange form no part of the circulating medium, or currency, which was first asserted before a Parliamentary Committee in 1832, was now maintained by the great majority of the commercial and banking witnesses

3. This seems to have been the first adoption by mercantile men of the theory, which is the reigning banking fallacy of the present day, which is now known by the name of the "Currency Principle." The principle shortly stated is this—*That when Bank notes are permitted to be issued, the number in circulation should always be exactly equal to the coin which would be in circulation if they did not exist.* The advocates of this principle maintain that it is the only true mode of regulating a paper currency, and preserving the paper of equal value with the gold coin. This theory sounds remarkably specious and plausible and, from the eminence of the persons who have been converted to it, has acquired much importance. Nevertheless, we affirm that there never was a greater delusion palmed off upon the credulity of mankind, and that it never could have emanated from, or be believed in by, any one who had the slightest knowledge of banking accounts

77. The rule for managing the Bank so as to conform to the principles of the Bullion Report, which had been considered as the acme of wisdom by all the witnesses before the Committee of 1832, was thus spoken of by Mr. S. J. Loyd, now Lord Overstone —"The rule of keeping a fixed amount of securities, it is true, has been suggested by the Bank herself for her guidance: but the folly has consisted entirely in the suggestion of such a rule, and not in the departure from it." (Q. 2904.) And again (Q. 2907)

—"First for the simple and exclusive purpose of regulating the circulation of the country, it leaves us without any rule whatever: and accordingly we find by the published returns that no fixed relation exists between the amount of bullion and the amount of circulation. Second, the circulation may decrease while the bullion is increasing, or it may increase whilst the bullion is decreasing. We have had practical examples of each kind within the last few years. Third, the bullion, *though the demands of the depositors may leave the Bank coffers in large amounts;* **in fact it may be wholly drained out without any contraction of the circulation,** *and, therefore, without any effect being produced on prices or the foreign exchanges, by means of which the drain may be checked*"

This passage deserves the closest attention, because the Bank Act of 1844 was expressly devised for the purpose of preventing such a thing, and we shall see shortly how far it was effectual for this purpose

78. Nothing can be more wearisome than to read through the enormous mass of heterogenous questions heaped upon one another, without aim or drift, tending to no result, and capable of producing none. Nothing can be more humiliating than the contrast between the Bullion Committee of 1810 and the Committee of 1840. The Bullion Committee were masters of the science; they knew how to govern the direction of the inquiry, to cross-examine the witnesses, and to make them expose their own fallacies, by involving them in contradictions and inconsistencies. And, when the witnesses had given their opinions, the Committee were able to judge and decide upon the value of the testimony, and the result was the complete demolition of the opinions of the great majority of the witnesses. But, in the Committee of 1840, the want of a presiding mind is painfully conspicuous. They were totally destitute of any knowledge of the principles of the science of banking; and after having protracted the inquiry through two Sessions, they were obliged to come to the humiliating confession of their own incompetence to frame a report on the evidence given, and to suggest to Parliament the expediency of appointing a commission for that purpose!

79. From 1838 there ensued a dismal series of four bad harvests in succession, which were attended with much suffering to the people; high prices of corn, and, as a natural consequence, large importations of foreign corn, and a very low amount of bullion in the Bank. In fact, the alleged rule of 1832 was a complete dead letter, and it was not till the 27th of August, 1842, that these proportions were again attained, when the liabilities stood at £29,022,000, and the bullion at £9,729,000. The crops of 1842-43-44 were prodigiously abundant—the latter more so than any for ten years preceeding. The consequences of this, as well as other circumstances which happened at that time to economise the capital of the country, produced a cycle of years of great apparent prosperity, but which ended in the general revulsion of 1847. This latter part is beyond the limits of this Chapter. The bullion in the Bank continued steadily and rapidly to accumulate until in December, 1843, it reached a higher limit than it had ever done before, being £14,982,000, and continued to increase after that until the passing of the Act of 1844

CHAPTER XII

FROM THE BANK ACT OF 1844 TO THE PRESENT TIME

1. On the 6th May, 1844, Sir Robert Peel moved a resolution of the House, that it was expedient to continue for a limited time certain of the privileges then enjoyed by the Bank of England, subject to any conditions that might be passed by any Act for that purpose. In bringing this resolution forward, he gave a preliminary sketch of the evils of the paper currency as it then stood, and the methods he proposed for placing it on a sounder footing. After dwelling on the importance of a metallic standard and exposing the absurdity of the theories which were so prevalent during the Restriction Act, and the advantage of having a single standard of value, he addressed himself to the more immediate subject of consideration—the state of the paper circulation of the country, and the principles which ought to regulate it—"I must state, at the outset, that, in using the word money, I mean to designate by that word the coin of the realm, and promissory notes payable to bearer on demand. In using the words paper currency, I mean only such promissory notes. I do not include in these terms bills of exchange, or drafts on bankers, or other forms of paper credit. There is a natural distinction, in my opinion, between the character of a promissory note payable to bearer on demand, and other forms of paper credit, and between the effects which they respectively produce upon the price of commodities, and upon the exchanges. The one answers all the purposes of money, passes from hand to hand without indorsement, without examination, if there be no suspicion of forgery; and it is, in fact, what its designations imply it to be, currency, or circulating medium . . . I think experience shews that the paper currency, that is, the promissory notes payable to bearer on demand, stands, in a certain relation to the gold coin and the foreign exchanges, in which other forms of paper credit do not stand. There

are striking examples of this, adduced in the Report of the Bullion Committee of 1810, in the case both of the Bank of England and of the Irish and Scotch Banks. In the case of the Bank of England and shortly after its establishment there was a material depreciation of paper in consequence of its excessive issue. The notes of the Bank of England were at a discount of 17 per cent. After trying various expedients, it was at length determined to reduce the amount of Bank notes outstanding. The consequence was an immediate increase in the value of those which remained in circulation, the restoration of them to par and a corresponding improvement in foreign exchanges. . . . In the case of Ireland, in 1804 the exchange with England was extremely unfavourable. A committee was appointed to consider the causes. It was denied by most of the witnesses from Ireland that they were at all connected with excessive issues of Irish notes. In the spring of 1804 the exchange of Ireland with England was so unfavourable, that it required £118 10*s.* of the notes of the Bank of Ireland to purchase £100 of the notes of the Bank of England. Between the years 1804 and 1806 the notes of the Bank of Ireland were reduced from £3,000,000 to £2,410,000, and the effect of this, taken in conjunction with an increase of the English circulation, was to restore the relative value of Irish paper and the exchange with England to par. In the same manner an unfavourable state of the exchange between England and Scotland has been more than once corrected by a contraction of the paper circulation of Scotland. In all these cases the action has been on that part of the paper credit of the country which has consisted of promissory notes payable to bearer on demand. There had been no interference with other forms of paper credit, nor was it contended then, as it is now contended by some, that promissory notes are identical in their nature with bills of exchange, and with cheques on bankers, and with deposits, and that they cannot be dealt with on any separate principle"

2. There is no need now of saying anything more regarding the unhappy heresy with which Sir Robert Peel was then infected, that nothing but Bank notes are paper currency, because we have nothing new to say. But it is impossible to imagine anything more inaccurately stated as historical evidence

to support his ideas. In the first place, he committed the immense error of omitting to consider that, in the English and Irish cases, these things happened when the English and Irish Bank notes were *not* payable to bearer on demand, when they were, in fact, inconvertible. In his statement regarding the Bank of England he relied upon the Bullion Report. Now, we have shewn, by the most incontrovertible evidence, in Chapter IX., that this passage of the Bullion Report is the most amazing mass of chronological error and confusion that can be imagined. It was not the profuse issues of Bank notes that depressed the exchanges, but the *badness of the coin;* it was not taking Bank notes out of circulation that brought the exchanges to par, but the *restoration of the coinage*, and the exchanges were brought to par nine months before the Bank note was brought to par. Hence, in this case, the statement that the excessive issues of Bank notes caused the exchanges to fall, and the withdrawal of them restored them to par, has not a shadow of a foundation in truth. Hence, there is no truth whatever in saying that the action was upon the Bank notes—the action was simply and solely on the *silver coinage.* The Irish case is equally inapplicable, because the notes were then inconvertible, and they were the medium in which payment of bills of exchange was made; and then, unquestionably, an excessive quantity of them depressed the exchanges prodigiously; but how does such a case apply to notes strictly convertible? The Scotch case is equally inapplicable—which will be explained in the following chapter, for the notes were *not* payable to bearer on demand, but six months after demand. Consequently, of these three examples, the first is wholly inaccurate, and the other two are wholly inapplicable to the case he had in hand

3. He then proceeded to expatiate on the evils of unlimited competition of issues—

"Are the lessons of experience at variance with the conclusion we are entitled to draw from reason and from evidence? What has been the result of unlimited competition in the United States? In the United States the paper circulation was supplied, not by private bankers, but by joint stock banks, established on principles apparently the most satisfactory. There was every

precaution taken against insolvency, unlimited responsibility of partners, excellent regulations for the publication and audit of accounts, immediate convertibility of paper into gold. If the principle of unlimited competition, controlled by such checks, be safe, why has it utterly failed in the United States? How can it be shewn that the experiment was not fairly made in that country? Observe this fact, while there existed a central Bank (the United States Bank) standing in some such relation to the other banks of the United States as the Bank of England stands to the banks in this country, there was some degree (imperfect, it is true) of control over the general issues of paper. But when the privileges of the central Bank ceased, when the principle of free competition was left unchecked, then came, notwithstanding professed convertibility, immoderate issues of paper, extravagant speculation, and the natural consequences, suspension of cash payments and complete insolvency. Hence I conclude that reason, evidence and experience combine to demonstrate the impolicy and danger of unlimited competition in the issue of paper"

4. It is impossible to say which is the more remarkable in this extract—the evidence Sir Robert Peel omitted, or the evidence he adduced. The first thing that strikes us is—What was the need of crossing the Atlantic in search of an example of joint stock banks, with unlimited competition of issues? Why did he not cross the Tweed? On the north side of the Tweed there had existed joint stock banks, with unlimited issues, for 150 years, and no central bank to control the others; the principle of free competition was left unchecked, and the natural consequences, "suspension of cash payments and complete insolvency," had never occurred. But Sir Robert Peel carefully avoided saying one word about that case, and the reason was that it militated against the theory he was determined to carry at all hazards, *that of one Central Bank of Issue*

5. But the evidence he adduced was as great a misrepresentation of historical fact as what we have quoted in Section 2. The American Banks, indeed, established on principles the most satisfactory! why John Law was the parent of American banking!

They were a formal adoption of the wild theories of Law. However, we cannot fully expose the fallacy of Sir Robert Peel's views of American banking until a subsequent chapter; but as to the fact of the Central Bank of the United States exercising any due controlling influence over the other Banks, we will only quote a passage from President Van Buren's message to Congress, 1839—

"I am aware it has been urged that the control (over the operations of the local banks) may be best attained and exerted by means of a National Bank. *The history of the late National Bank, through all its mutations, shews that it was not so.* On the contrary, it may, after a careful consideration of the subject be, I think safely stated, that at every period of banking excess it took the lead; that in 1817 and 1818, in 1823, and in 1833, and in 1834, its vast expansions, followed by distressing contractions, led to those of the State institutions. It swelled and maddened the tides of the banking system, but seldom allayed or safely directed them. At a few periods only was a salutary control exercised, but an eager desire, on the contrary, exhibited for profit in the first place; and if afterwards its measures were severe towards other institutions, it was because its own safety compelled it to adopt them. It did not differ from them in principle or in form; its measures emated from the same spirit of gain; it felt the same temptation to over-issue; it suffered from and was totally unable to avert, those inevitable laws of trade, by which it was itself affected equally with them, and at least on one occasion, at an early day, it was saved only by extraordinary exertions from the same fate that attended the weakest institution it professed to supervise. In 1837 it failed equally with others in redeeming its notes, though the two years allowed by its charter had not expired, a large amount of which remains at the present time outstanding."

Such was the language held by the Government regarding that institution to whose abolition Sir Robert Peel attributed the destruction of American credit! and if we were to descend from the evidence of the Executive to that of the most eminent private commercial writers, such as Mr. Galatin, Mr. Lee, Mr. Appleton, and others, we shall find that the most reckless mis-management was the chief characteristic of that Bank. So much for the value of it as an argument in support of Sir Robert Peel's views

6. Sir Robert Peel then said that some contended—and he was not prepared to deny the proposition—that if we had a new state of society to deal with, the wisest plan would be to claim for the state the exclusive privilege of the issue of promissory notes, as we have claimed for it the exclusive privilege of coining. They considered that the State is entitled to the whole profits to be derived from that which is the representative of coin, and that if the State had the exclusive power of issuing paper, there would be established a controlling power which would ensure, as far as possible, an equilibrium in the currency. Is it necessary to point out the gross and ludicrous fallacy of Sir Robert Peel in this sentence? It is the height of incorrectness to say that the State has the exclusive power over the coinage, or at least, that she has reserved it to herself. Ever since the reign of Charles II., every private person has the right to have bullion coined at the Mint; formerly both gold and silver, to an unlimited extent. Since 1816 this privilege is confined to gold coin. At this moment all persons are entitled to have as much gold bullion as they please coined at the Mint; the only thing the State reserves to itself is the privilege of *coining* it so as to insure its being of a certain weight and fineness. But in what way is this analogous to the issue of promissory notes? The only duty of the State is to take measures that those who issue notes shall be in a condition to fulfill their promise of payment on demand. He then stated it was the intention of the Government to increase as much as possible the power of a single bank of issue and that bank should be the Bank of England. The Bank was, therefore, to continue its privileges of issue, but it was to be divided into two departments, the one for the purpose of issuing notes, and the other for the ordinary business of banking. But the Bank was to be deprived, once for all, of the power of unlimited issues. These were to take place in future on two foundations only: 1st, a fixed amount of public securities; and 2ndly, bullion. The amount of issues upon public securities was permanently fixed at £14,000,000; every other note was to be issued in exchange for bullion only, so that the amount of notes issued on bullion should be governed solely by the action of the public. Although Sir Robert Peel wished that there should only be a single bank of issue, yet existing interests were to be regarded; and those banks which were at that time lawfully issuing their

own notes might remain banks of issue ; but their amount was to be strictly limited to a certain definite average. There were other details concerning joint stock banks which we shall reserve

7. On the 20th of May, Sir Robert Peel introduced his further resolutions, and proposed that, in the event of any country banks of issue failing, or withdrawing their notes voluntarily from circulation, the Bank might, with the consent of the Crown, increase its issues to a definite proportion of the notes thus withdrawn. And further, that the Bank should be obliged to buy all gold bullion presented for purchase at £3 17*s.* 9*d.* per ounce (the Bank had been giving only £3 17*s.* 6*d.*), and a certain proportion was allowed to be on silver bullion, as the export of that was a proper remedy for the inconvenience of our standard differing from that of other nations. It was therefore of great importance to ensure such a stock of silver in this country, as might meet the wants of merchants, and prevent them having to send to the Continent for it. He proposed that the silver bullion upon which the Bank might issue notes should not exceed one-fourth of the gold bullion

8. It was impossible for Sir Robert Peel not to see the inconsistency of his measure of 1844, with his expressed sentiments in 1819 and 1833, that it was inexpedient to limit the issues of the Bank to any fixed amount, because there were times of commercial difficulty, when an increased issue of notes might be the proper remedy. There is no doctrine more strenuously insisted on by the Bullion Report, by the Statesmen of 1819, as well as by the Government in 1833, and Sir Robert Peel himself, at both these periods, than that it was impossible to fetter the discretion of the Bank in its issues. Sir Robert Peel knew that he was now taking away this power from the Bank altogether, and, accordingly, he was obliged to meet this objection. He said—

"It is said that the Bank of England will not have the means which it has heretofore had of supporting public credit, and of affording assistance to the mercantile world in times of commercial difficulty. Now, in the first place, the means of supporting credit are not means exclusively possessed by banks. All who are possessed of unemployed capital, whether bankers or not, and who

can gain an adequate return by the advance of capital, are enabled to afford, and do afford, that aid which it is supposed by some that banks alone are able to afford. In the second place, it may be a question, whether there be any permanent advantage in the maintainance of public or private credit, unless the means of maintaining it are derived from the *bonâ fide* advance of capital, and not from a temporary increase of promissory notes, issued for a special purpose. Some apprehend that the proposed restriction upon issue will diminish the power of the Bank to act with energy at the period of monetary crisis and commercial alarm and derangement. But the object of the measure **is to prevent** (so far as legislation can prevent) the recurrence of those evils from which we suffered in 1825, 1836, and 1839. **It is better to prevent the paroxysm** than to excite it, and trust to desperate remedies for the means of recovery"

Sir Robert Peel, therefore, deliberately took away the power of the Bank to act on extreme occasions, under the impression that his Act would prevent these extreme occasions from arising. We shall see how his hope was fulfilled

9. Sir Charles Wood followed Sir Robert Peel, travelling over the same ground, and giving the same caricatured description of American banking as he had done; moreover, he also was infected with what is known by the name of the "currency principle"—

"It is not enough, then, to enact that the Bank notes shall be convertible. The paper circulation must not only be convertible, but must vary in amount from time to time as a metallic circulation would vary. A system, therefore, of paper circulation is required, which will attain this object, and insure a constant and steady regulation of the issues on this principle. This, and this alone, affords a permanent security for the practical convertibility of the notes at all times, and for the consequent maintenance of the standard"

10. The bill was read a second time, after a feeble opposition, by a majority of 185 to 30. It passed through the House of Lords with a very short debate, and no division. Lord Radnor

alone protested against it, and it received the Royal Assent on the 19th of July, 1844

11. The chief provisions of this Act are as follows (Statute 1844, c. 32)—

1. That, after the 31st August, 1844, the issue of Bank notes by the Bank of England should be kept wholly distinct from the general banking business, and be conducted by such a committee of the directors as the Court might appoint, under the name of the "Issue Department of the Bank of England"

2. That, on the same day, the Governor and Company should transfer, appropriate, and set apart to the issue department securities to the value of £14,000,000, of which the debt due by the public to the Bank was to be a part; and also so much of the gold coin and gold and silver bullion as should not be required for the banking department. The issue department was then to deliver over to the banking department an amount of notes exactly equal to the securities, coin, and bullion so deposited with them. The Bank was then forbidden to increase the amount of securities in the issue department; but it might diminish them as much as it pleased, and increase them again to the limit defined, but no further. The banking department was forbidden to issue notes to any person whatever, except in exchange for other notes, or such as they received from the issue department in terms of the Act

3. The proportion of silver bullion, in the issue department, on which notes were to be issued, was not at any time to exceed one-fourth part of the gold coin and bullion held at the time by the issue department

4. All persons whatever, from the 31st August, 1844, were to be entitled to demand Bank notes in exchange for standard gold bullion, at the rate of £3 17*s.* 9*d.* per ounce

5. If any banker who, on the 6th May, 1844, was issuing his own notes, should cease to do so, it should be lawful for the Crown, in Council, to authorise the Bank to increase the amount of securities in the issue department to any amount not exceeding two-thirds of the amount of notes withdrawn from circulation

6. Weekly accounts in a specified form were to be transmitted to Government, and published in the next *London Gazette*

7. From the same date the Bank was relieved from all stamp duty on their notes

8. The annual sum payable by the Bank for their exclusive privileges should be increased from £120,000, as settled in 1833, to £180,000. And all profits derived by the Bank from the increase of their issues above the £14,000,000 as prescribed by the Act, shall go to the public

9. After the passing of the Act, no person other than a banker who was lawfully issuing his own notes on the 6th May, 1844, should issue Bank notes in any part of the United Kingdom

10. After the passing of the Act, it was forbidden to any banker *to draw, accept, make, or issue, in England or Wales, any bill of exchange, or promissory note, or engagement for the payment of money payable to bearer on demand, or to borrow, owe, or take up in England or Wales, any sum or sums of money, on the bills or notes of such banker, payable to bearer on demand,* except such bankers as were on the 6th May, 1844, issuing their own Bank notes, who were allowed to continue their issues in such manner, and to such extent, as afterwards provided. The rights of any existing firm were not to be affected by the withdrawal, change, or addition of any partner, provided the whole number did not exceed six persons

11. Any banker who ceased to issue his own notes from any reason whatever, after the Act, was not to resume such issues

12. All existing banks of issue were forthwith to certify to the commissioners of stamps and taxes the place, and name, and firm at and under which they issued notes during the twelve weeks next preceding the 27th April, 1844. The commissioners were then to ascertain the average amount of each bank's issues, and it should be lawful for such banker to continue his issues to that amount, provided that on an average of four weeks they were not to exceed the average so ascertained

13. If any two or more banks of issue had become united during that twelve weeks, the united bank might issue notes to the aggregate amount of each separate bank

14. The commissioners were to issue in the *London Gazette* a statement of the authorised issues of each bank

15. If two or more banks afterwards become united, each of less than six partners, then the commissioners might authorise

them to issue notes to the amount of their separate issues. But if the number of the united bank exceeded six, their privilege of issuing notes was to cease

16. If any banker exceeded his authorised issue he was to forfeit the excess

17. Every bank of issue was to send a weekly account of its issues, which was to be published in the *London Gazette*

18. The mode of taking the average was laid down, and bankers were to permit their books of account to be inspected by a Government officer properly appointed, and to make a return to Government once every year, within the first fortnight in January

19. The Bank of England was allowed to compound with private banks of issue, to withdraw their own notes, and issue Bank of England notes, for a sum not exceeding one per cent. per annum, up to the 1st August, 1856

20. All banks whatever in London, or within 65 miles of it, were allowed after the passing of the Act to draw, accept, or indorse bills of exchange not being payable to bearer on demand

21. The privileges of the Bank were to continue till twelve months' notice, to be given after the 1st August, 1855; and repayment of the public debts, and all other debts whatever.

12. Such are the leading provisions of Sir Robert Peel's Act, which was meant to carry out a particular theory of currency, which we have no hesitation in affirming is one of the most stupendous delusions on the subject that any one ever conceived. A theory as opposed as possible to the opinions of all the greatest authorities on the subject, during the great discussions on the currency in 1804, 1811, and 1819, which we have already abundantly quoted in the former part of this volume. But the most remarkable circumstance is that the Act authorises the most flagrant violation of the principle it is intended to enforce; for the issuing of notes upon the public funds is the most vicious principle possible. It is the theory of John Law, which we shall more fully consider in a subsequent chapter. Indeed, so utterly blind was one of the most distinguished advocates of this theory to the true nature of monetary science, that he boasted that, "practically considered, fluctuations in the

rate of interest, and in the state of commercial credit, so far as they can result from alteration in the value of the currency, may, under the operation of the proposed system, be taken at nihil"*

13. The avowed object of the Act of 1844 was to take the regulation of the currency out of the hands, or even the power, of the directors of the Bank of England. The incorrigible mismanagement of that body had, in the opinion of everybody, aggravated every crisis. The authors of the Act of 1844 flattered themselves that for every five sovereigns that left the country a five-pound note must be withdrawn from circulation. We shall see hereafter how this expectation was fulfilled. In the meantime Sir Robert Peel himself and all the supporters of the Act gave out that it was the complement of the Act of 1819, though we confess we do not clearly see the meaning of the phrase. If, however, they mean to say that it was in the spirit of the Act of 1819, or of the statesmen of that period, we wholly deny such to be the fact, and to suppose so only argues the most profound ignorance of the doctrines of the authors of the Act of 1819

14. The issues of notes, then, of the Bank of England are founded upon two of the most fatal delusions that ever prevailed on the subject of the paper currency; the one the theory of John Law and the other the "Currency Principle," which came into fashiou about thirty years ago

15. We have observed, in the last chapter, that, owing to the good harvests of 1842-43-44, the bulliou in the Bank accumulated very rapidly during these years, and a very large quantity of money, which the nation must otherwise have spent in food, was set free for commercial purposes. Other circumstances occurred at the same time to liberate a large quantity of the capital of the country from its accustomed use, and to render it applicable to commercial purposes, which have been very clearly and ably pointed out by Mr. James Wilson. He shews that the rapidity and certainty of conveyance reduces very greatly the amount of stock it is necessary at all times to keep on hand when communications are slow and uncertain. That the amount of

* *Col. Torrens.* *Tooke's Hist. of Prices, Vol. IV., p.* 282.

goods in transit is much larger with a slow conveyance than a quick one. For example, when Manchester supplies London with manufactured goods—if it takes seven days by canal for these goods to reach London, it is clear that there must always be seven days' consumption of goods on the way. If the same transit is accomplished by railway in one day, it is only necessary to have one day's consumption on the way; and the capital employed in producing the other six days' consumption is liberated, and may be employed in promoting other commercial operations. When we consider the enormous economy of capital required in the transaction of the same amount of business which was effected by the introduction of more rapid modes of communication, whether by railways or steamboats, we shall understand how greatly they increased the national resources. There can be no doubt that the economy of national capital effected by the extension of railways far exceeded the losses which occurred from unsuccessful speculation in them. Now, these operations were beginning to have their full effect in saving the national capital, simultaneously with the good harvests of 1842-43-44, and helped to swell the quantity of disposable capital to an unprecedented extent

16. An attentive consideration of these circumstances is absolutely necessary, because they shew, if anything were necessary to shew it, the gigantic error committed by many writers, who think that the prices of goods must vary exactly with any increase or decrease of the amount of the currency, whereas there is no necessary relation between the two whatever. The particular methods of doing business have the most important influence on the quantity of capital necessary to carry it on; and a clumsy or more ingenious method of transacting business may make the most important changes in the quantity of money necessary to circulate any given amount of commodities without causing any alteration in the price of those commodities

17. The Act of 1844 having placed an absolute limit upon the discretion of the Bank in issuing notes, Sir Robert Peel said that he thought that banking business could not be too free and

unrestrained. The extraordinary accumulation of capital, arising from the circumstances we have just detailed, lowered the market rate of discount to $1\frac{3}{4}$ and $2\frac{1}{2}$ on the best bills, and the Bank of England immediately conformed to the market rate on the passing of the Act, and reduced its rate from 4 per cent. to $2\frac{1}{2}$ for the best bills. The day the Act came into operation, indeed, the whole of the discounts were done at $1\frac{3}{4}$, and they continued at that rate for a fortnight, when some were done at 2 per cent.; and up to the 26th October a considerable portion was done at $2\frac{1}{4}$. From this date, however, up to October, 1845, the rate was $2\frac{1}{2}$. In November, 1845, the rate was suddenly raised to $3\frac{1}{2}$, and continued at that figure till August, 1846, when it was lowered to 3 per cent. These rates being governed by the flow of bullion, which diminished from $15\frac{1}{2}$ millions when the Act of 1844 passed, to $13\frac{1}{2}$ millions in November, 1845; after which it increased again to above 16 millions in August, 1846, and then began steadily to decline till it reached its minimum in the great crisis of October, 1847

18. The first failure of the potato crops in Ireland in 1845, and the railway mania of that year, must be too fresh in the recollection of most persons to need repetition here; nor had they anything to do properly with the management of the Bank, whose sole proper duty was to look to its own affairs, and preserve its own stability. The calamity of 1846 was far more severe and extensive than that of the preceding year. It was absolutely certain that an immense quantity of bullion would require to be exported in payment of the grain it would be necessary to import. Accordingly, from the middle of September, 1846, a steady and continuous drain of bullion set in, *but the Bank made no alteration in the rate of discount* until the 16th January, 1847, when the bullion had fallen to £13,949,000 it raised the rate of discount to $3\frac{1}{2}$, and on the 23rd, the bullion having been further diminished by £500,000, it raised the rate to 4 per cent. Henceforth the drain continued rapidly, but the Bank still continued to make no alteration until the 10th April, when its treasure being reduced to £9,867,000, the rate of discount was raised to 5 per cent. Here we have the same inveterate blunder committed by the Bank as on so many previous occasions—an immense drain

of bullion, and yet none but the most feeble, inefficient, and puerile means taken by the Bank to raise the value of money here. But the operation of the Bank at this time is an excellent example of the self-acting nature of the Act of 1844. We need only observe that the Banking Capital of the Bank of England is £14,000,000 of notes, based upon public securities, together with notes representing as much bullion as there is in the issue department. Consequently, the notes held in reserve must always be equal to the difference between the notes in circulation, or held by the public, and the sum of £14,000,000 added to the quantity of bullion. Now, we have seen that the intention of the framers of the Act of 1844 was that, as the bullion diminished, the notes in the hands of the public should be diminished, in conformity with the "currency principle." Let us now see, 1st—How the Bank was inclined to act on the principle; and, 2ndly—Supposing they were disinclined to do so, how far the Act, by its self-acting principles, compelled them to do so. The following figures speak for themselves—

1846.	Bank Notes.		Total Amount of Bullion.	Minimum Rate of Discount Per Cent.
	Held by the Public.	Held in Reserve by the Bank of England.		
August 29	20,426,000	9,450,000	16,366,000	3
October 3	20,551,000	8,809,000	15,817,000	„
November 7....	20,971,000	7,265,000	14,760,000	„
December 19 ..	19,549,000	8,864,000	15,163,000	„
1847.				
January 9	20,837,000	6,715,000	14,308,000	3
„ 16	20,679,000	6,546,000	13,949,000	3½
„ 30	20,469,000	5,704,000	12,902,000	4
February 20....	19,482,000	5,917,000	12,215,000	„
March 6	19,279,000	5,715,000	11,596,000	4
„ 20	19,069,000	5,419,000	11,232,000	„
April 3	19,855,000	3,700,000	10,246,000	„
„ 10	20,243,000	2,558,000	9,867,000	5

These figures show the utter futility of the idea that, as the bullion diminished, the Act could compel a reduction of notes in the hands of the public, for the notes in circulation were within

an insignificant trifle as large in amount when the bullion was only £9,867,000, as when it was £16,366,000. Consequently, nothing could be a more total and complete failure of the Act of 1844, on the very first occasion its services were required

19. Now, let us recall our readers' attention to what Mr. S. J. Loyd had pointed out as the fatal defect of the Bank rule of 1832, which we have given in § 77 of the preceding chapter. He said that under it *the whole bullion in the Bank might be drained out without any contraction in the circulation*, and it was supposed that the Act of 1844 had especially provided against this defect. In fact, the whole theory of the framers of the Act was, that for every five sovereigns which left the country a £5 note should be withdrawn from circulation: and that if the directors failed to do so of their own accord, the "mechanical" action of the Act would compel them to do so. But what was the actual result? The Bank had lost £7,000,000 of treasure, and its notes in circulation were only reduced by £200,000; the whole of the reduction had been thrown upon its own reserves. Hence the Bank Act was open to exactly the same charge as the Bank rule of 1832!

Mr. F. T. Baring, ex-chancellor of the Exchequer, who maintained that the Act had been successful on several points, allowed that it had completely failed on this point*—"I find that the amount of bullion in the Bank on September 12, 1846, was £16,354,000, and on April 17, 1847, it was reduced to £9,330,000, being a diminution of £7,024,000. Now, I take the same dates with respect to the circulation of notes, and I find that on September 12, 1846, the amount was £20,982,000, and on April 17, 1847, it was £21,228,000, being an increase of £246,000. . . . . I must say that I never entertained the idea that it would have been possible under the operation of this bill to have shewn such a set of figures. . . . . I believe, if we look back we shall find that *the operation of the deposits and the question of the reserve was not sufficiently considered* either by those who were favourable or those who were opposed to the bill. I cannot find in the evidence before the Committee of 1840 more than a few sentences leading me to suppose that danger arising

* *Hansard. Parl. Debates, Vol.* 95, *p.* 615.

from such a cause was contemplated or referred to: yet this was a most important consideration, for it was *by the reserve the Bank was enabled to do what was contrary to the spirit of the bill—when gold was running out, not to reduce their circulation by a single pound.* I do not think that the system works satisfactorily in this respect: and, in fact, the point did not receive anything like a sufficient consideration. Perhaps it was impossible before the bill was in practical operation to see how the reserve of notes would operate: but it certainly never entered into the contemplation of any one then considering the subject *that* £7,000,000 *in gold should run off, and yet that the notes in the hands of the public would rather increase than diminish*"

20. The number of notes held in reserve in the Banking department, under the new system of 1844, corresponded in effect very much to the amount of the bullion held by the Bank before its division. When, therefore, the public saw that the whole banking resources of the Bank were reduced to £2,558,000, a complete panic seized both the public and the directors. The latter adopted measures of the most unprecedented severity to check the demand for notes. The rate was not only raised to 5 per cent., but this was only applicable to bills having only a few days to run, and a limit was placed upon the amount of bills discounted, however good they might be. Merchants who had received loans were called upon to repay them without being permitted to renew them. During some days it was impossible to get bills discounted at all. These measures were effectual in stopping the efflux of bullion, and a sum of £100,000 in sovereigns, which had been actually shipped for America, was re-landed. During this period the rate of discount for the best bills rose to 9, 10, and 12 per cent. During all this time the price of wheat continued steadily to rise, notwithstanding the monetary pressure, and at the close of May the price on one occasion reached 131*s.* in Windsor market. The foreign exchanges, which had been adverse to the country during the latter part of 1846 and the beginning of 1847, from the immense quantity of foreign corn which was imported, became favourable in the middle of April, partly owing to the great monetary pressure

21. The pressure passed off after the first week in May, having lasted about three weeks, and bullion began to flow in after the 24th of April, until, at the end of June, it amounted to £10,526,000, the notes in circulation being £18,051,000, and the notes in reserve £5,625,000

22. The conduct of the Bank, in keeping down the rate of discount when a rapid drain was going on, and the foreign exchanges were unfavourable, was the exact counterpart of what it had done on so many previous occasions, and excited much comment and adverse criticism by the whole commercial community of London. The market rate rose decidedly above it, so that a rush for discounts was made to the Bank, which were no sooner granted than the gold was immediately drawn out

23. On the 27th of May the Chancellor of the Exchequer brought the subject of the monetary pressure before the House, and stated that he had numerous deputations to him respecting a suspension of the Act of 1844, which the Government were not prepared to adopt. However, he meant to assist the Bank so far as to dispense with the aid the Government usually had from the Bank at Quarter day. With this view he intended to raise the interest on Exchequer bills, which were then at a greater depreciation than any other species of Government security, to 3*d.* per day. On the 10th he brought in a resolution to allow all persons who had subscribed to the eight million Irish loan a discount of 5 per cent. on any instalment paid in before the 18th of June, and 4 per cent. if paid in before the 10th of September

24. The enormously high price of grain, which had no parallel since 1812, had the natural effect of tempting a great number of houses to enter into speculations for the import of grain, far beyond their power to support. The enormous importations in May, June, and July, coupled with the very favourable appearance of the harvest, caused a heavy and continuous fall in the price of grain, and the reports of the potato crop being favourable, the price of wheat fell to 49*s.* 6*d.* in September. But the tremendous fall in the price of wheat had been attended with ruin to the houses which had speculated in it.

Moreover, that hideous nuisance which always flourishes with noxious luxuriance in times of speculation—accommodation paper—was extensively prevalent. The failures in the corn trade began in August, which engendered a great discredit in that and other branches of commerce. On the 7th of August the minimum rate of discount was raised to 5½, but this only referred to very short-dated paper, as the greater part of the paper discounted was charged at much higher rates, even up to 7 per cent., which were maintained up to the 9th October

25. On the 9th August the first of the frightful catalogue of failures began. Leslie, Alexander and Co. stopped payment, with liabilities amounting to £500,000. On Wednesday, the 11th, Coventry and Sheppard stopped for £200,000, and King, Melville and Co. also for £200,000, and several other minor firms made the total failures in the first week amount to £1,200,000. In the next week Giles & Co. failed for £100,000, and the total in the second week was £300,000. In the following week Robiuson and Co. failed for £110,000, the senior partner of which firm was the Governor of the Bank of England. In three weeks the failures were £3,027,000. Week after week followed, each one increasing in severity, until at last the total exceeded £15,000,000. In the middle of September Saunderson and Co., the eminent bill brokers, stopped payment, being much involved with the great houses in the corn trade. The exchanges, which had been brought to par in April by the monetary pressure in that month, were, in consequence of the increasing severity of the crisis, become decidedly favourable, and on the 25th of September bullion began to flow in. During the whole of September the commercial calamities were falling fast and thick

26. Almost all the firms connected with the Mauritius, such as Reid, Irving & Co., failed, principally from having their funds locked up in sugar plantations. This was accompanied by immense failures in the India trade; the credit commonly given in that trade being of unusual length, which affords dangerous facilities for stretching it to too great a length. The railway works which had been sanctioned in the session of 1845-46, were now in full operation, causing an immense demand for ready

money. Almost every tradesman in the kingdom, from Land's End to John O'Groats, was deep in railway speculations. The extravagant delirium of prosperity in 1845-46 had caused great numbers of them, not only to live far beyond their means themselves, but to trust their customers beyond all the bounds of ordinary credit. We have heard it said that in numberless instances their bills for goods furnished in 1845 were unpaid in 1847. There can be no doubt whatever but that commercial credit of all sorts and descriptions, among all classes of traders, was in probably a more unhealthy state than it had ever been before, and that an unprecedentedly large portion of the community were entangled in obligations, of which there was no prospect of their ever working themselves free. Sharp and severe, therefore, as the remedy was, it unquestionably was the very best thing that could happen, that this unhealthy superstructure should be cleared away, and that commerce should be reconstructed upon an improved and renovated basis. The extreme pressure may be considered to have begun on the 23rd of September, when the Bank adopted more stringent measures for curtailing the demand upon its resources. Ever since the 26th of June the diminution of bullion had been going on rapidly; on the 2nd of October it was reduced to £8,565,000, the notes in circulation being £18,712,000, and the reserve £3,409,000. This rapid diminution of their resources shewed the directors that the time had come when they must think of their own safety; and on that day they gave notice that the minimum rate on all bills falling due before the 15th of October would be 5½; and they refused altogether to make advances on stock or Exchequer bills. This last announcement created a great excitement on the Stock Exchange. The town and country bankers hastened to sell their public securities, to convert them into money. The difference between the price of consols for ready money and for the account of the 14th of October shewed a rate of interest equivalent to 50 per cent. per annum. Exchequer bills were sold at 35*s.* discount. Everything became worse and worse day by day. On the 16th of October the Bank rates of discount varied from 5½ to 9 per cent. At this time the bullion was £8,431,000; the notes in circulation, £19,359,000; and in reserve, £2,630,000. The following week,

from Monday, the 18th, to Saturday, the 23rd, was the great crisis. On that Monday the Royal Bank of Liverpool, with a paid up capital of £800,000, stopped payment, which caused the funds to fall 2 per cent. This was followed by the stoppage of the North and South Wales Bank, also of Liverpool, the Liverpool Banking Company, the Union Bank of Newcastle, heavy runs on the other banks of the district, and other bank failures at Manchester, and in the West of England. As the whole of the commercial world knew that the resources of the Banking department were being rapidly exhausted, a complete panic seized them. A complete cessation of private discounts followed. No one would part with the money or notes in his possession. The most exorbitant sums were offered to and refused by merchants for their acceptances

27. The continued and ever-increasing severity of the crisis caused deputation after deputation to be sent to the Government, to obtain a relaxation of the Act, and on Saturday, the 23rd of October, the final determination of the Ministry to authorise the Bank to issue notes beyond the limits prescribed by the Act was taken and communicated to the Bank, who immediately acted upon it, and discounted freely at 9 per cent. The letter itself was not actually sent till Monday, the 25th. It stated that the Government had expected that the pressure which had existed for some weeks would have passed away like the one in April had done, by the operation of natural causes; that, being disappointed in this hope, they had come to the conclusion that the time had come when they ought to attempt, by some extraordinary and temporary measure, to restore confidence to the mercantile community. That for this purpose they recommended the directors of the Bank of England, in the emergency, to enlarge the amount of their discounts and advances upon approved security; but that, in order to restrain this operation within reasonable limits, a high rate of interest should be charged, which, under the circumstances, should not, they thought, be less than 8 per cent. That if such a course should lead to any infringement of the law, they would be prepared to propose to Parliament, on its meeting, a Bill of Indemnity. This letter was made public about 1 o'clock on Monday, the 25th, and

no sooner was it done so than the panic vanished like a dream! Mr. Gurney stated that it produced its effect in ten minutes! No sooner was it known that notes *might* be had, than the want of them ceased! Not only did no infringement of the Act take place, but the whole issue of notes, in consequence of this letter, was only 400,000; so that, while at one moment the whole credit of Great Britain was in imminent danger of total destruction, within one hour it was saved by the issue of £400,000

28. The extraordinary and disastrous state of public credit at this period may be judged of by the aid afforded by the Bank of England to different establishments, from the 15th of September to the 15th of November, as follows—

1. It advanced £150,000 to a large firm in London, who were under liabilities to the extent of several millions, on the security of debentures of the Governor and Company of the Copper Miners of England, which prevented them stopping payment

2. It advanced £50,000 to a country banker, on the security of real property

3. It advanced £120,000 to the Governor and Company of the Copper Miners, which prevented them stopping payment

4. It advanced £300,000 to the Royal Bank of Liverpool, on the security of bills of exchange, over and above their usual discounts; but this was inadequate, and the bank, having no further security to offer, stopped payment

5. It advanced £100,000 to another joint stock bank in the country

6. It advanced £130,000 on real property, to a large mercantile house in London

7. It advanced £50,000 to another mercantile house, on the security of approved names

8. It advanced £50,000, on bills of exchange, to a joint stock bank of issue, which soon after stopped payment

9. It advanced £15,000, on real property, to another mercantile house in London

10. It saved a large establishment in Liverpool from failing, by forbearing to enforce payment of £100,000 of their acceptances falling due

11. It assisted another very large joint stock bank in the country, by an advance of £800,000 beyond its usual discount limit

12. It advanced £100,000 to a country banker, on real security

13. It advanced to a Scotch bank £200,000, on the security of local bills, and £60,000 on London bills

14. It assisted another Scotch bank, by discounting £100,000 of local and London bills

15. It advanced £100,000 to a large mercantile house in London, on approved personal security

16. It assisted a large house in Manchester to resume payment, by an advance of £40,000 on approved personal security

17. It advanced £30,000 to a country bank on real property

18. It assisted many other houses, both in town and country, by advances of smaller sums on securities not usually admitted; and it did not reject, in London, any one bill offered for discount, except on the ground of insufficient security

The far larger portion of this assistance was given before the 23rd of October

29. A general election had taken place in the autumn of 1847, and the Ministry, having taken upon themselves the responsibility of authorising the Bank of England to violate the Act of 1844, lost no time in calling a meeting of the new Parliament. It met on the 18th of November, and, after a few preliminary days were occupied in swearing in the members, the speech from the throne was delivered on the 23rd. The first paragraphs stated, as a reason for calling them together, that the embarrassments of trade were so alarming that the Queen had authorised the Ministry to recommend to the Bank of England a course which might have led to an infringement of the law. Happily, however, the power given to infringe the law, if necessary, had allayed the panic

30. On the 30th of November, the Chancellor of the Exchequer moved for a Committee to inquire into the causes of the recent commercial distress, and how far it had been affected by the Act of 1844. He spoke of the panic in the spring. He

said that he had seen no reason to change the opinion he had then expressed, that it was mainly owing to the imprudence of the Bank, which, having full warning of the various demands it would have upon it, was too tardy in raising the rate of discount, and had lent out, over the period when the dividends became payable, the money they had provided for that purpose; so that they were not in possession of adequate funds when they were required. The low state of their reserve then excited consternation. The Bank then took the severe step of reducing the amount of discounts; they pulled up as suddenly as they had unwisely let out their reserve before. With respect to the panic of October, he said that the severe pressure in the Money Market had abated when the bank failures in Liverpool and the North of England took place, which renewed the alarm. After describing the great pressure on the banks in the country he said—

"The Bank of England were pressed directly for assistance from all parts of the country, and indirectly through the London bankers, who were called upon to support their country correspondents. The country banks required a large amount of notes, to render them secure against possible demands; not so much for payment of their notes as of their deposits. Houses in London were applying constantly to the Bank for aid. Two bill brokers had stopped and the operations of two others were nearly paralysed. The whole demand for discount was thrown upon the hands of the Bank of England. Notwithstanding this, as I before said, the Bank never refused a bill, which it would have discounted at another time, but still the large mass of bills which, under ordinary circumstances, are discounted by bill brokers, could not be negociated. During this period, we were daily, I may say hourly, in possession of the state of the Bank. The Governor and Deputy-Governor at last said they could no longer continue their advances, to support the various parties who applied to them; that they could save themselves, that is, they could comply with the law; but that they could not do so without pressing more stringently on the commercial world. At this crisis, a feeling as to the necessity of the interposition of Government appeared to be generally entertained; and those conversant with commercial affairs, and least likely to decide in favour of the course we ultimately adopted, unanimously expressed an opinion, that if

some measure were not taken by the Government to arrest the evil, the most disastrous consequences must inevitably ensue. Evidence was laid before the Government, which proved not only the existence of severe pressure from the causes I have stated, but also that it was aggravated in a very great degree by the hoarding on the part of many persons, of gold and Bank notes, to a very large extent, in consequence of which an amount of circulation, which under ordinary circumstances, would have been adequate, became insufficient for the wants of the community. It was difficult to establish this beforehand, but the best proof of the fact is in what occurred after we interfered. As soon as the letter of the 25th October appeared, and the panic ceased, thousands and tens of thousands of pounds were taken from the hoards, some from boxes deposited with bankers, although the parties would not leave the notes in their bankers' hands. Large parcels of notes were returned to the Bank of England cut into halves, as they had been sent down into the country; and so small was the real demand for an additional quantity of notes, that the whole amount taken from the Bank, when the unlimited power of issue was given was under £400,000. The restoration of confidence released notes from their hoards, and no more was wanted, for this trifling quantity of additional notes is hardly worth notice. . . . Parties of every description made application to us, with the observation, 'We do not want notes, but give us confidence.' They said 'We have notes enough, but we have not confidence to use them; say you will stand by us, and we shall have all we want; do anything in short that will give us confidence. If we think that we can get Bank notes, we shall not want them. Charge any rate of interest you please, ask what you like—(*Mr. Spooner*, No! no!) I beg pardon of the honourable gentleman, but I may be permitted to know what was actually said to me. I say, that what I have stated, was the tenor of the applications made to me. Parties said to me, 'Let us have notes, charge 10—12 per cent. for them; we don't care what the rate of interest is. We don't mean, indeed, to take the notes, because we shall not want them; only tell us that we can get them, and this will at once restore confidence.' We have been asked what was the change of circumstances which induced us to act on Saturdary when we declined acting a day or

two before. I reply, that the accounts which we received on Thursday, Friday, and Saturday, were of a totally different description from those which had been previously brought us. It was on Saturday and not before, that this conviction was forced upon us, and it was not till then that we felt it necessary to sanction a violation of the law"

The persons applying generally said that it was necessary to place a limit on the amount to be authorised, which they proposed should be £2,000,000 or £3,000,000, but the Government thought that the limit should be placed on the rate of interest, and, accordingly, this was the method adopted

31. Sir Robert Peel felt particularly called upon to come forward and defend the Act of 1844. After defending himself from some minor charges, he protested against singling out individual members of Parliament, and making them responsible for the acts of the whole Legislature. He said that some persons alleged that the Act of 1844 had been passed without due inquiry, but he recounted the committees that had sat for five years, and had asked, on the whole, upwards of 14,000 questions—questions and answers without end, but with no practical result from those apparently interminable investigations. The last committee had closed its labours without any practical results. At last, the Ministers determined to bring forward a measure on their own responsibility, which had been carried by extraordinary majorities; but, nevertheless, if it could be shewn that the Act of 1844 could be amended that it ought to be done

"There has been some misrepresentation respecting the objects of this Act. I do not deny that one of the objects contemplated by the Act was the prevention of the convulsions that had heretofore occurred in consequence of the neglect of the Bank of England to take early precautions against the withdrawal of its treasure. I did hope that, although there was no imperative obligation on the Bank of England to take those precautions, that the experience of 1825, 1836 and 1839, would have induced that establishment to conform to principles which the directors of the Bank acknowledged to be just, and which they had more than once professed to adopt for their own regulation. Sir, I am bound to say, that in that hope, that in that object of the Bill, I have

been disappointed. I am bound to admit, seeing the extent of commercial depression which has prevailed, and the number of houses which have been swept away, some of which however, I think, were insolvent long before the Bill came into operation, and others of which became insolvent in consequence of the failure of those who were connected with them, and were imprudent in their speculations, I am bound to admit that that purpose of the Bill of 1844, which sought to impress, if not a legal at least a moral obligation on the Bank, to prevent the necessity for measures of extreme stringency by timely precautions, had not been fulfilled. Sir, I must contend, that it was in the power of the Bank, if not to prevent all the evils that have arisen, at least, greatly to diminish their force. If the Bank had possessed the resolution to meet the coming danger by a contraction of its issues, by raising the rate of discount, by refusing much of the accommodation which they granted between the years 1844 and 1846—if they had been firm and determined in the adoption of those precautions, the necessity for extrinsic interference might have been prevented; it might not then have been necessary for the Government to authorise a violation of the Act of 1844. . . . The bill of 1844 had a triple object. Its first object was that in which I admit it has failed, namely, to prevent, by early and gradual, severe and sudden contraction, and the panic and confusion inseparable from it. But the bill had at least two other objects of at least equal importance—the one to maintain and guarantee the convertibility of the paper currency into gold; the other to prevent the difficulties which arise at all times from undue speculation being aggravated by the abuse of paper credit in the form of promissory notes. In these two objects my belief is that the bill has completely succeeded. My belief is that you have had a guarantee for the maintenance of the principle of convertibility such as you never had before; my belief also is, that, whatever difficulties you are now suffering from a combination of various causes, those difficulties would have been greatly aggravated if you had not wisely taken the precaution of checking the unlimited issues of the notes of the Bank of England, of joint stock banks, and private banks"

32. Sir Robert Peel then entered into a most able de-

scription of the true evils the country was suffering under, which arose from the enormous destruction of capital by the dearth of food, and the unusual absorption of capital in one channel of commerce, the construction of railroads, which were not yet remunerative. He shewed the absurdity of expecting to have cheap money while capital was scarce. The whole of his remarks are so admirable that we regret that their length prevents us from giving them entire. He cordially approved of the course the Government had taken in not issuing the letter sooner than they did, and in doing it when they did. The true remedy for the state of things under which the country was suffering was individual exertion, the limitation of engagements, the cessation of all demands which could be postponed; an earlier issue of the letter would have relaxed these necessary exertions. But to that pressure a panic succeeded, which could not be provided against or foreseen by legislation, which could not be reasoned with, and which could only be met by a discretionary assumption of power by the Government suitable to the emergency. Whether any modification of the Act of 1844 was desirable, was a question for future consideration. His own opinion was in favour of the maintenance of the great principles of that measure. If the identical restrictions were not imposed upon the Bank as were then in force, still there must be some restrictions; for, after the experience of 1825, 1836, and 1839, he, for one, would not be content to leave the regulation of the monetary concerns of this country to the uncontrolled discretion of the Bank. In 1844, the general conviction was that it ought not to be so left, and he, for one, knew no better mode of imposing restriction than that which was devised by the Act of 1844. Fully agreeing with Sir Robert Peel on the necessity for a restriction, we think that the restriction devised by the Act of 1844 is not the true one, and that it leaves open the door to the Bank for the most fatal mismanagement. We shall endeavour to shew, in a future chapter, that one may be devised which must be effectual

33. The Committee appointed by each House began to sit in February, 1848. The Governor, Mr. Morris, and the Deputy-

Governor, Mr. Prescott, were examined at great length before each Committee, and expressed their unqualified approbation of the Act of 1844, and the manner it had worked. The object of the Act was to place the circulation of this country exactly in the same position as it would have been if the currency had been entirely metallic

"Your opinion is, then, that with regard both to the contraction of the currency and the expansion of the currency, they would both have taken place precisely in the same mode, and to the same degree, had the currency been purely metallic?"

Mr. Morris—"Yes, I have not the slightest doubt upon the subject"

They said that its object was to secure the convertibility of the note, which it had effectually done. That the Bank acted erroneously in the spring of 1847 in not raising their rate of discount sooner, which much contributed to the monetary pressure in April. They said that the Government letter of the 25th October was not sought for by them, nor issued in any way at their instance, that they had no fear whatever for the Bank, and that it was not required to maintain the solvency of the Bank; but, nevertheless, it had the best effects in allaying the commercial panic. That the panic would inevitably have occurred even without the Act of 1844, but that Act brought it on sooner, and probably made it less severe. That the great merit of the Act was, that when the pressure did come, the Bank was in possession of £8,000,000 of treasure; that if the Bank had been left free it would probably have followed the course of dangerous liberality which it had done on so many previous occasions. That, though the Government letter did relieve the panic, it would probably have passed away without it. They earnestly deprecated any alteration of the Act, except that they thought the permission to issue notes upon silver bullion too limited

34. Mr. S. Gurney agreed in blaming the management of the Bank during the first three months of 1847, and said, that if

the Bank had commenced restrictive measures much earlier, the pressure of April would have been mitigated. He said, that in October the rapid diminution of the reserve caused a very general distrust among the public as to how they were to obtain circulating medium. The wealthy and more powerful took care very largely to over-provide themselves, infinitely beyond the necessities of the case. The consequence was, that the notes in the hands of the public amounted to nearly £21,000,000, of which, he had no doubt that four or five millions were locked up and inoperative, in consequence of the alarm and fear of not being able to get Bank notes at all. In illustration of this, he said that his own house was largely called upon for money on Saturday, the 23rd, not from distrust of the house, but from doubt that Bank notes were to be had at all. They applied to the Bank for discount to a large amount, which was agreed to, but they were told the rate must be ten per cent.; upon remonstrating with the Governor, and saying that it would have the worst effect if it became known that their house was paying ten per cent. for money, the rate was finally agreed upon at nine per cent. At this rate they took £200,000. On Monday, the 25th, however, the demand was again very heavy, and they applied for £200,000 more. It was a case of difficulty with the Bank under its reduced reserve and the limitation of the Act, and a final decision was postponed till two o'clock. At one o'clock, however, the letter from the Government was announced, authorising the relaxation. Its effect was immediate. Those who had sent notice for their money in the morning sent word that they did not want it, and that they had only ordered payment by way of precaution. After the notice, they only required £100,000 instead of £200,000, the alarm passed off, and by the end of the week they had to ask the Bank, as a favour, to be allowed to repay the money they had taken. Mr. Gurney stated, that the experience of the last two years had altered his opinion respecting the Act, and that he thought it necessary there should be a relaxing power somewhere

35. Lord Overstone was of opinion that the Act of 1844 had no effect whatever in aggravating the pressure in April; that

the course pursued by the Bank from January to April was extremely erroneous and detrimental to the public interest, and was only stopped by the positive provisions of the Act; and, if that system of procedure had not been so stopped, it must have ended in the most disastrous consequences

36. Mr. George Carr Glynn had been of opinion before the Act passed that the division of the Bank into the issue and banking departments was a desirable experiment, but after the experience of the preceding year, considered that it had decidedly failed

37. The Committee of the Commons presented their Report on the 8th June, 1848. It entered into no philosophical examination of the correctness, or the contrary, of the opinions of the witnesses; it aspired to and attained to no higher function than acting as a kind of preface to the mass of evidence, but concluded by stating the opinion of the Committee that it was not expedient to make any alteration in the Act of 1844. The Report of the Committee of the Lords was presented in July, and was a much more elaborate production. It not only examined the evidence at considerable length, but pronounced an opinion of its own, and recommended that the Act should be so far amended as to introduce a discretionary relaxing power, which was only to be exercised during the existence of a favourable foreign exchange

38. On the 22nd of August Mr. Herries moved that the House would, early next Session, take the Report into consideration, which motion was negatived. In the next Session he made another attempt to induce Parliament to alter the Act, but without avail

39. After the severe medicine the body commercial had been subjected to by the great crisis of 1847, which there can be little doubt was of great service, by removing houses that had been insolvent for years, the commerce of the country was estab-

lished on a sounder basis, and had gone on, generally speaking, with great prosperity, up to the autumn of 1857. The chances of war led to a great demand for shipping, and, of course, much speculative dealing in that property. This occurred especially at Liverpool, in the autumn of 1854, and led to some very extensive failures. The revelations which ensued from these failures disclosed that the same inveterate and abominable practices of accommodation paper were again rampant. Fictitious bills to an enormous amount were fabricated among persons who were in the same species of business, and were negotiated all over the kingdom. Other parties resorted to practices even more disgraceful still, if possible. These great failures, which are too well known to require naming here, gave credit a very serious shock; in addition to which, a considerable number of persons who were engaged in extravagant over-trading in Australia, suffered severe losses. There is nothing to call for special remark except that a great drain of bullion began from the Bank of England at the end of June, and continued rapidly and steadily till the middle of October. On the 23rd June it stood at £18,169,000, including the coin and bullion in both departments; and by the 13th of October it was reduced to £11,752,300. The causes of this great outflow are not sufficiently ascertained for us to reason upon them with accuracy. Some attributed it to the purchases of corn which the high price of wheat here caused to be made for importation—some to operations of the Bank of France. Time will probably furnish us with more satisfactory and accurate information. What the causes were is of comparatively slight moment. We are happy to say that the Bank of England acted, in this case, with a promptitude and decision most favourably contrasted with its former errors. The rate of discount was rapidly raised, to enhance the value of money. On no former occasion had the rise been so frequent and extensive in so short a time; but the effect produced was most salutary

40. The following table, taken at intervals, shows the bullion in the Bank, and the rate of discount—

1855.	Bullion in the Issue Department.	Rate of Discount.
	£	
January 4 ...	... 13,180,835 ...	... 5 per cent.
„ 20 ...	.. 11,880,560 ...	... „
February 22 ...	... 12,313,230 ...	... „
March 22 ...	... 13,479,975 ...	... „
April 12 ...	... 14,392,500 ...	... 4½ per cent.
May 3 ...	... 14,791,785 ...	... 4 per cent.
„ 17 ...	... 15,336,510 ...	... „
„ 31 ...	... 16,337,685 ...	... „
June 14 ...	... 17,056,945 ...	... 3½ per cent.
„ 28 ...	... 17,429,435 ...	... „
July 19 ...	... 16,631,890 ...	... „
August 9 ...	... 15,601,590 ...	... „
September 6 ...	... 14,368,010 ...	... 4 per cent.
„ 13 ...	... 13,668,005 ...	... 4½ per cent.
„ 27 ...	... 12,695,250 ...	... 5 per cent.
October 4 ...	... 12,368,255 ...	... 5½ per cent.
„ 18 ...	... 11,205,855 ...	... 6 per cent. for bills not longer than 60 days.
November 8 ...	... 10,741,320 ...	... 7 per cent. for bills not longer than 95 days.
December 6 ...	... 10,580,570 ...	... „
„ 27 ...	... 10,369,595 ...	... „

For several preceding weeks the *Economist* reported the Money Market to be as tight as it could well be. But on the 29th of December it said—

"The Money Market continues as stringent as it can well be, and no bills can be discounted under the Bank rates. Paper at long dates cannot be discounted on any terms. The great extent of our trade, as indicated by the returns for November, confirms the suspicion awakened by the continued demand for money, *that trade has received no serious check from the advance in the rate*

of discount, and is still more extensive than prudence warrants, or in the end will be justified"

41. This most judicious conduct on the part of the Bank, which merited nothing but the most unqualified commendation, excited a great clatter amongst a certain number of people who think that money is to be created *ad libitum* by writing "promises to pay" on bits of paper, when there is no money to pay them with, and who think it possible to send one's money abroad and also to have it at home. The papers were filled for weeks with letters and articles exhibiting all the rank follies which were once prevalent on the subject of the price of corn, and which have been so admirably exposed by Adam Smith. But in this respect a most marked and healthy change has been of late years most manifest in the majority of public writers. The great majority now understand that the rate of discount is the true regulating power of the paper currency, and, instead of assailing the Bank with howls and execration when it does its duty in raising its rate, they, with a few exceptions, now universally commend it. This is great, real, and sound progress in the spread of true Economic science

42. At the end of this year the Queen exercised the power reserved in the Act of 1844, to enable the Bank of England to extend its issues to not more than two-thirds of the amount of those of any banks of issue that might cease to issue notes. From the passing of the Act up to this period forty-seven banks, whose authorised issues amounted to £712,623, ceased to issue their own notes, and, on the 13th December, 1855, the Queen in Council issued an order authorising the Bank of England to increase its issues to the amount of £475,000 upon public securities. But this is not the *bonâ fide* increase to the issuing power of the Bank. For in the year 1854 the Clearing House was organised on a better plan, and whereas before that an average amount of £200,000 of bank notes was required to adjust its transactions, by the new system these were totally dispensed with, and no notes at all are now required. Moreover, by the admission of the joint stock banks to the Clearing House, they are saved from keeping an enormous amount of notes to

meet the "bankers' charges," which may safely be calculated at £500,000. These notes, therefore, are now available to the Bank to use for commercial purposes, and, consequently, are to be considered as so much additional power of issue to the Bank, which has thus in reality acquired an increased power of issue to the amount of £1,175,000 since the Act of 1844. Up to February, 1857, seven other banks, whose aggregate issues amounted to £111,020, have ceased to issue notes, but no further power was granted to the Bank to extend its issues until 1866

43. For several months after the beginning of 1856 the Money Market continued in a state of great "tightness," and the bullion in the Bank scarcely varied. The lowest was on the 26th April, when it stood at £9,081,675; after that it gradually rose, and the rate of discount fell in summer to about $4\frac{1}{4}$ to $4\frac{1}{2}$, but in October the bullion fell very considerably again, and discount rose to 7 and 8 per cent., and a pressure followed of about the same severity as in 1855, and continued with very little variation to the end of the year

The Crisis of 1857

44. The crisis we have just been considering was the inevitable termination of a multiplicity of derangements of the proper course of commerce. No one conversant with commercial history could fail to foresee that the entanglements of so large a portion of the public with railway speculations, and the losses caused by the failure of the harvest must produce a crisis. We have seen that this crisis gave a fatal blow to the prestige of the Bank Act of 1844, which was enacted in express contradiction to the opinions of the most experienced authorities of former times, whom it professed to follow. They had always protested against imposing a numerical limit on the issues of the Bank. The experience of the crisis of 1847, amply confirming that of 1793, 1797, and 1825, shewed that such restrictions cannot be maintained in the paroxysm of a great crisis without endangering the existence of the whole mass of commercial credit

The crisis we are now going to describe was of a very different nature. It burst upon the world in the most unexpected manner.

It gave no premonitory symptoms which were apparent to any but very watchful and experienced eyes; and, when it did come, it revealed a depth of rottenness in the commercial world which appalled every one, and proved to be of much severer intensity than that of 1847

45. The supporters of the Act were much crestfallen by its failure in 1847, but they took courage again after the Crimean war. The Act had been subjected to the test of a great commercial crisis and had failed. It was now subjected to the test of a war, and many of its opponents predicted that it would fail again; but it did not. Its effects during the Crimean war were probably salutary; but the war did not proceed to such a length as to test its powers severely. Peace was restored before the resources of the country were in any manner strained

We have said above that the rate of discount in the autumn of 1856 was 7 and 8 per cent. It was gradually reduced, and on December 4th it was $6\frac{1}{2}$, and on the 18th 6 per cent., and continued so till the autumn of 1857

These rates were, of course, very much higher than the average ones of former times, and they were one ground of accusation brought by many against the Act. But, in truth, they were its very merit. The directors had now learnt from experience, and it was these very variations which preserved the security of the Bank

In August nothing seemed amiss to the public eye. "Things were then pretty stationary," said the Governor of the Bank—"the prospects of harvest were very good; there was no apprehension that commerce at that time was otherwise than sound. There were certain more far-seeing persons who considered that the great stimulus given by the war expenditure, which had created a very large consumption of goods imported from the East and other places, must now occasion some collapse, and still more those who observed that the merchants, notwithstanding the enhanced prices of produce, were nevertheless importing as they had done successfully in the previous years. But the public certainly viewed trade as sound, and were little aware that a crisis of any sort was impending, far less that it was so near at hand"

The bullion at this time was £10,606,000, the reserve £6,296,000, and the minimum rate of discount 5½, when on the 17th August the Bank entered into a negotiation with the East India Company to send one million in specie to the East

46. Things were in this state when, about the middle of September, news came of a great depreciation of American railroad securities. It was found that for a long time they had been carrying on an extravagant system of management, and paying dividends not earned by the traffic. The system had at last collapsed, and, of course, an enormous depreciation of their stock followed, to the amount of nearly 20 per cent. It was supposed that as much as eighty millions of this stock was held in England, and that the effects of this fall would be very serious. On the 25th August the *Ohio Life and Trust Company*, with deposits to the amount of £1,200,000, stopped payment. The panic spread throughout the Union. Discount rose to 18 and 24 per cent. On the 17th October news came that 150 banks in Pennsylvania, Maryland, Virginia, and Rhode Island had stopped payment. The drain was then beginning to be severe on the Bank of England. On the 8th the bullion was £9,751,000, the reserve £4,931,000, and discount was raised to 6 per cent. On the 12th the rate at Hamburg was 7¾, and bullion was flowing towards New York; discount was then raised to 7 per cent. About this time rumours strongly affecting the Western Bank of Scotland were abroad. On the 19th discount was raised to 8 per cent. The commercial disasters were increasing in America. In one week the Bank of France lost upwards of a million sterling. The bullion in the Bank had sunk to £8,991,000, and the reserve to £4,115,000. Discount was raised to 7½ in Paris, and to 9 per cent. at Hamburg. On the 26th a deputation from the Western Bank of Scotland applied for assistance, but the Bank was afraid to undertake so enormous a concern. The Borough Bank of Liverpool was also in difficulties, and after some time the Bank agreed to assist them to the amount of £1,500,000 on condition of their winding up. But the arrangements fell through in consequence of the Liverpool Bank closing its doors before it was completed

47. On the 13th October a general run took place on the New York banks, in consequence of the severe measures of restriction they were obliged to adopt to protect themselves. Eighteen immediately stopped, and soon afterwards, out of 63 banks, only one maintained its payments. This immediately reacted on Liverpool and Glasgow, which were much involved with American firms. By the 19th October the failures began to be numerous in this country. Uneasiness greatly increased in London. On the 28th the principal discount house applied to the Bank for an assurance that they would give them any assistance they might require. On the 30th an express came for £50,000 (sovereigns) for a Scotch bank, part of £170,000, and £80,000 for Ireland. On the 5th November discount was raised to 9 per cent. The great house of Dennistoun, with liabilities of nearly two millions, stopped payment on the 7th, and the Western Bank of Scotland closed its doors on the 9th. Failures in London were rapidly on the increase. Purchases and sales of stock were enormous, much beyond what they had ever been before. The bullion in the Bank had sunk to £7,719,000, and the reserve to £2,834,000. On the 9th discount was raised to 10 per cent. On the 10th November a large discount house applied to the Bank for £400,000. The Bank of France raised its rates to 8, 9, and 10 per cent. for one, two, and three months. Another English bank was assisted. The City of Glasgow Bank then stopped. On that day the discounts at the Bank were £1,126,000. On the 10th and 11th upwards of one million sterling in gold was sent to Scotland, and there was a great demand from Ireland. On the 11th Sanderson & Co., the great bill brokers, stopped payment with deposits of 3½ millions. On the 12th the discounts at the Bank were £2,373,000. On the 11th, in consequence of these sudden demands for Scotland and Ireland, the bullion was reduced to £6,666,000, and the reserve to £1,462,000

48. As the failures in London became more tremendous, discounts became more and more contracted. The stunning news of the stoppage of so many banks created a banking panic. Private banks stopped discounting altogether. The only source of discount was the Bank of England. The public, however,

and the directors knew that the precedent of 1847 must be followed, and, though they made no direct application to the Government for the suspension of the Act, they laid the state of the Bank continually before them, and continued to discount as if they knew the Act must be suspended. At last private persons, being unable to obtain discounts, began to make a run for their balances. When universal ruin was at last impending, the Government, on the 12th November, sent a letter to the Bank to say, that if they should be unable to meet the demands for discounts and advances upon approved securities, without exceeding the limits of their circulation prescribed by the Act of 1844, they would be prepared to propose to Parliament a Bill of Indemnity for any excess so issued. In order, however, to prevent the temporary relaxation of the Act from being extended beyond the necessities of the case, the rate of discount was not to be reduced below their present rate, 10 per cent.

49. The issue of this letter immediately calmed the public excitement. But, on the evening of the 12th, the total banking reserve of the Bank and all its branches was reduced to £581,000. Truly, said the Governor of the Bank, to the question 132, "Supposing the letter in question had not been issued on that day, would the Bank, on the morning of the 13th, have been in a condition to continue its discounts?—*No; certainly not*

"133. Would it not have been compelled to announce it could not discount any more commercial paper?—Yes, or nearly so

"138. Is it not likely that the announcement of the cessation of discounts at the Bank of England would have increased the alarm of the mercantile public in London?—Materially

"139. Would not an increased alarm on the part of the mercantile public have naturally led to an increased demand upon the bankers?—It would have led to immediate failures, and would so far have lessened the quantity of bills coming for discount by the number of bills which were actually rendered unavailable

"140. Without reference to bills, do you not think it likely that there would have been increased demands upon the bankers, which would have compelled them to withdraw a portion of their

deposits from the Bank of England?—I think certainly that in part there would have been"

To shew the state the Bank was reduced to, the Governor gave in a paper to the Committee with the following figures, shewing its reserve on the 11th and 12th November—

On Wednesday, November 11th, the reserve consisted of—

	£	£
Notes in London	375,005	
„ at Branches	582,705	
		957,710
Gold coin in London	310,784	
„ at Branches	97,665	
		408,449
Silver coin in London	44,046	
„ at Branches	51,948	
		95,994
Total Reserve ...		£1,462,153

On Thursday, November 12th, at night, the reserve consisted of—

	£	£
Notes in London	68,085	
„ at Branches	62,545	
		130,630
Gold coin in London	274,953	
„ at Branches	83,255	
		358,208
Silver coin in London	41,106	
„ at Branches	50,807	
		91,913
Total Reserve ...		£580,751

That is to say, the total reserve in London on the evening of the 12th was £384,144. Such were the resources of the Bank of England to commence business with on the morning of the 13th! Truly, said the Governor, it must have entirely ceased discounting which would have brought an immediate run upon it; and the bankers' balances alone were £5,458,000. It is easy to see that the Bank could not have kept its doors open an hour

50. The Governor of the Bank said that the panic of 1857 was not so great as that of 1847, but the real commercial pressure was more intense. This is proved by the fact, that while in the former year the issue of the letter immediately allayed the panic, and by that means stopped the demand for notes, and there was only required an issue of £400,000 in notes to surmount all difficulties, which did not exceed the statutory limits; in 1857 the issue of the Government letter produced no cessation of the demand for advances. The statutory limit was £14,475,000 of notes issued on securities, and there were issued in excess of these—

	£		£
Nov. 13	186,000	Nov. 23	397,000
„ 14	622,000	„ 24	317,000
„ 16	860,000	„ 25	81,000
„ 17	836,000	„ 26	243,000
„ 18	852,000	„ 27	342,000
„ 19	896,000	„ 28	184,000
„ 20	928,000	„ 30	15,000
„ 21	617,000		

On the meeting of Parliament an Act was passed permitting a temporary suspension of the Bank Act till February 1st, 1858, provided the directors did not reduce their discount below 10 per cent. On the 24th December they reduced it to 8 per cent., thereby reviving the operation of the Act

In 1858 the inevitable consequence followed from the great crash of 1857. The enormous mass of false trading being cleared away money naturally flowed into the Bank, and the quantity of bullion gradually and steadily increased up to the end of the year. The Bank now learnt to adopt much higher rates of discount than formerly. In 1847 it kept the rate at 5 per cent. while the bullion was under £10,000,000; in 1858 the rate of 5 per cent. was maintained till the bullion exceeded £15,000,000—a great advance in sound principle

51. In our *Dictionary of Political Economy*, Art. *Banking in England*, § 254, published not long after this great crisis, we said—"This year (1858) passed away in great tranquility, persons not yet having forgotten the lesson of 1857. But we cannot

doubt, judging from all former experience, that an uneasy spirit will soon be abroad again; we cannot doubt that the brood of speculators are now anxiously casting about to see if they can plant the seeds of the next crisis, and it is the duty of those who are now at the head of monetary affairs to be on the watch to counteract all such attempts as they can detect; and, in the meantime, the most interesting question at the present time, in a banking point of view, is—What is to be the next mania?"

Time has given an answer to this question. There is nothing special to arrest our attention during the next few years. The rates of discount continued generally moderate through 1859 and 1860. In February, 1861, it rose for a short time to 8 per cent. but soon subsided again. The unhappy civil war in America then being imminent, created natural apprehension as to our cotton supplies, and most persons could foresee that this would lead to monetary complications. These, however, were for the future. Through 1861 and 1862 the Money Market was, generally speaking, extremely easy, the issue of paper money by both the belligerent Governments having the inevitable effect of driving bullion over to this country; consequently trade flourished amazingly, and the price of money was very easy

52. And so things went on till October, 1863, when everyone began to foresee a disturbance in the Money Market. In the first place, the rapid rise in the price of cotton, from the failure of the supply from the Southern States of America, forced up the price to a great height. The world had to be searched to produce the supply. Immense quantities came from the East Indies, from Egypt, and from the Brazils, besides other quarters. This vast trade being suddenly created, had to be paid for in cash, as we have explained in the chapter on Exchanges. Consequently a great drain of silver began towards the East, which was obtained from Paris and Hamburg, the great marts for silver as London is for gold. The Italian Government, too, contracted a loan at this period

The law of limited liability began to operate at the same time, and the number of new companies being formed under it inspired uneasiness. The Bank of France lost great quantities of specie. The Bank of England raised its rate twice in one week, from 5 to

6, and then to 7. The Bank of France also raised its rate to 7, and spoke of issuing 50 franc notes; on the 2nd of December the Bank raised its rate to 7, and on the 3rd to 8. At the same time a great fall took place in the Russian Exchange, in consequence of certain Government measures not having succeeded. In consequence of these circumstances, the reserves of the Bank were considerably strengthened after a short time. But in January, 1864, a fresh export of specie began and continued with great severity till the middle or end of May, so that discount varied from 8 to 7, and 6, and again up to 9. In May the Bank again raised its rate twice in one week to 9. With a few fluctuations this great pressure continued all through the summer. Having fallen to 6 per cent. in June, it gradually rose again to 9 in September. After that it gradually fell to 3 per cent. in June, 1865

53. Already in March, 1864, the numbers of new companies formed under the limited liability principle gave great uneasiness. Up to that time it appeared there were 263 companies formed with a nominal capital of £78,135,000, out of which 27 were banks, and 14 discount companies. In August, 1864, the long-dated acceptances of the new financial companies began to press on the market, and lay the foundations of the crisis of 1866. In April the Bank of England joined the Clearing House, thereby still further economising the use of Bank notes

On the 8th of September the Bank raised its rate to 9 per cent., and this measure stopped the foreign drain, lowered the price of foreign commodities, and strengthened their reserves. The price of cotton was greatly lowered owing to the expected peace in America, and this rise in the rate of discount, striking on a falling market, produced an immense curtailment of business in all directions

The Great Crisis of May, 1866

54. On the 20th June, 1865, the rate of discount reached its minimum, 3 per cent. On the 5th August it was raised to 4, and then gradually and continuously, with very slight fluctuations, till it culminated in the crisis of May, 1866

In November a strong foreign drain began, the exchange fell

and, this growing stronger in January, 1866, the Bank raised its rate on the 6th to 8. This had some effect in arresting the drain, but it did not bring in fresh supplies from abroad. At this period the National Provincial Bank began to bank in London, and, in consequence, were obliged by law to give up their issues, which amounted to £442,371. Several other banks having ceased to issue, since the Bank of England had been last authorised to increase its issues, it was now permitted to increase its issues on securities to £15,000,000. The high rate of interest here caused a good deal of foreign money to be invested in long-dated bills

Towards the end of January the difficulties began, which brought on the panic in May. In consequence of there having been no Parliamentary inquiry, as might have been expected, the circumstances of this panic have never been fully explained. But it may be stated generally that these Finance and Discount Companies had advanced enormous sums of money to promote great enterprises, such as railways, and other schemes, which could never repay their cost until completed, which might take years to do. The first company that went was the Joint Stock Discount Company in February. This spread a general feeling of alarm, as the doings of this Company were merely a type of a large amount of business which was known to have been engaged in by numerous other companies. In March Barned's Bank at Liverpool stopped payment, with liabilities of upwards of 3½ millions. Several great railway contractors suspended, involving in discredit the companies with whom they were known to have "financed"

54. On the 3rd of May the Bank raised its discount to 7 per cent. Every one now felt that the long-dreaded crisis was at last come. The air was thick with rumours. Every one knew now that it was merely a question of weeks, perhaps of days, when the storm should burst. On the 8th of May the Bank raised its discount to 8 per cent. The advocates of the Bank Act, in their usual strain, proclaimed that on no account whatever must the Act be suspended. Such a thing was not to be thought of. Credit was then tottering and received a blow from the report of a speech of the Emperor Napoleon III., said to have been addressed by him to a meeting at Auxerre, in which he expressed

his detestation of the treaties of 1815. This, in the feverish political state of the Continent, was held to mean that he was determined on war

It is possible that this excitement might have passed off, as the Bank had a fair reserve in the banking department, and abundance of bullion in the issue department. On the 9th of May the Bank raised the rate of discount to 9 per cent. On this day, however, occurred the event which it is probable produced the great panic. The Mid-Wales Railway Company had accepted bills of exchange to the amount of £60,000, which were held by three parties—Bateman; Overend, Gurney & Co.; and the National Discount Company. The Company had dishonoured the bills, and actions had been brought against them by the three parties above named. As ill fortune would have it, judgment in these actions was delivered on the 9th of May, in the very height of the excitement. The Court of Common Pleas held unanimously that the Railway Company had no authority whatever to accept such bills, and consequently that they were absolutely invalid, and so much waste paper. For some time back it was known that Overend, Gurney & Co. were very deep in with contractors and other parties; moreover they held forged bills to a large amount of another firm. Their shares had been pressed on the market, and were going down. This fall in their shares produced a steady withdrawal of their deposits. The judgment in the case of the Mid-Wales Railway converted this into a complete run; and, on the afternoon of Thursday, May 10th, the terrible news spread through London that the great establishment of Overend, Gurney & Co. had stopped payment, with liabilities exceeding £10,000,000—the most stupendous failure that had ever taken place in the City. This news only spread about after banking hours, but every one could foresee what the effects would be next morning. The Chancellor of the Exchequer said next evening in the House that the oldest inhabitants of the City declared that the excitement was without a parallel. Early in the evening he was questioned as to whether Government had authorised the Bank to issue notes in excess of the legal limit. The Chancellor replied that he had not yet done so, but that he had received a deputation from the private bankers, and was expecting one from the Joint Stock Banks, on the subject. Very

soon afterwards this came, and the Members of the Cabinet, having retired to a committee room and consulted, the Chancellor, later in the evening, announced, amidst the loudest cheers from all parts of the House, that the Government, following the precedents of 1847 and 1857, had informed the Bank that, if they thought proper to make advances beyond the limit, the Government would bring in a Bill of Indemnity. He also stated that the Bank had advanced £4,000,000 that day

55. The announcement of the suspension of the Bank Charter Act produced the best effects next morning. The Bank raised its rate to 10 per cent., and everything calmed down, and though subsequently to this some other stoppages took place, yet the knowledge that the Bank had power to make advances on good securities abated the panic. On the 18th of May the Chancellor of the Exchequer stated that the Bank had advanced £12,225,000 in five days. The sum that was paid away during the panic can probably never be known, but it was something perfectly fabulous. It has been said, though of course we know not on what authority, that one great bank alone paid away £2,000,000 in six hours. The establishments that stopped payment were as follows, with their liabilities, according to their last published balance-sheet, though, of course, these were greatly diminished during the panic—

	Paid-up Capital.	Reserve.	Liabilities.
Overend, Gurney & Co.	£1,500,000	——	£11,000,000
English Joint Stock Bank	150,000	£6,000	not stated.
Oriental Commercial Bank	375,000	49,500	——
New Zealand Banking Corporation	80,000	16,000	136,000
Hallet, Ommanney & Co.	——	——	238,000
Imperial Mercantile Credit	500,000	——	not stated.
Commercial Bank of India	1,000,000	238,802	——
European Bank	644,490	31,393	2,112,838
Robinson, Ceryton & Co.	——	——	——
Alliance Financial Company	20,000	——	——
Bank of London	400,000	302,324	4,335,877
Consolidated Bank	600,000	71,808	3,817,999
Agra and Masterman's	1,500,000	500,000	15,582,002

Besides these stoppages, several other banks connected with the East confessed to enormous losses. Thus, the Bank of Hindostan, China, and Japan stated its profits at £23,485, and

its losses at £87,796, with a further expected loss of £70,000; the Asiatic Banking Company stated its profits at £61,494, and its losses at £142,000; the Bank of Queensland stated its profits at £10,373, and its losses at £42,071. What losses the other banks made we of course have no means of knowing, but they were probably heavy

56. In the great crisis of 1866, the Law given in Chapter VII., § 37, that the Rate of Discount is the most powerful method of controlling the Exchanges, seemed for some time to be at fault. From the beginning of that year the difference in the Rates at Paris and London was constantly 2 per cent., and gradually increased to 3, 4, and even 6 per cent.; and while the storm was raging in England, the Bank of France was in a state of the greatest serenity. The high rates in England were totally unable to prevent a severe foreign drain, and the Bank of France rapidly gained large quantities of bullion, while discount was only 4 per cent. This remarkable and, indeed, unprecedented phenomenon, led many persons to question the truth of the law: and even to maintain that the Rates in different countries ought to be quite independent of each other. But as we have shewn in that Chapter, the Rate of Discount, although the most powerful, is only one of several causes which influence the flow of bullion, which may at any time act in the same or in contrary directions. On this occasion it was overpowered for a short period by other causes. The principal of these was the utter discredit into which England had fallen. It was fully expected that the Bank would stop payment, and there would be a general stoppage of the other banks, involving the mercantile community in ruin. The high rate of discount failed to attract supplies, because it was feared that the whole principal would be lost. Consequently large quantities of long-dated bills in England were hurried over here, and realised at any sacrifice, and the proceeds remitted abroad. But as soon as these temporary causes had ceased to act, large supplies of bullion poured in, and the equilibrium between credit and bullion was restored. As was well pointed out in a pamphlet by Mr. Fowler at the time, it was only that a longer period than was usual was required to produce the required effect on the exchanges than had been found needful in other cases

With respect to the Bank of France the explanation is also easy. There was no commercial crisis in France, but strong expectations of war. Consequently mercantile enterprise was curbed, and specie naturally flowed into the Bank of France. Also in anticipation of war the Government of Italy suspended cash payments and adopted paper money. This of course necessarily drove specie out of the country, and it also naturally went to the Bank of France

Thus it is seen how necessary it is to have a knowledge of the circumstances at any period to understand the operation of the Laws of Economics

Thus we see that true science is vindicated by experience, and the history of Banking since 1866 has amply confirmed the truth of this principle, which was first demonstrated in the First Edition of this Work in 1856, and since then has made its way to universal acceptance by all competent persons. The Usury Laws in France were modified in order to enable the Bank of France to adopt it, and by a sedulous attention to this principle the Notes of the Bank of France, which were for several years inconvertible, circulated exactly at par with specie; and, in fact, every bank in the world is now managed on this principle

Having brought the history of Banking up to this point, we do not think it necessary to give any further details of events since then. The primary object of the history we have given is to establish **Principles.** We have given an exact history of the different doctrines which have been held as to managing the Bank and the Paper Currency, until at last scientific reasoning and practical experience have equally demonstrated that the true method of controlling credit and Paper Currency is by means of the **Rate of Discount.** We have given ample details of the steps by which this great doctrine gradually established itself in the Banking and Mercantile world. To pursue the subject further would not bring out any new principles; it would only give superfluous illustrations of a principle which is now as firmly established among all competent persons as the Newtonian Law of Gravity is among men of science: and, therefore, prolonging an account would only occupy space without any good object

CHAPTER XIII

HISTORICAL SKETCH OF THE RISE AND PROGRESS OF BANKING IN SCOTLAND

1. The Bank of Scotland is the first instance in the world of a private joint stock bank formed by private persons, for the express purpose of making a trade of banking, dependent on their own private capital, and wholly unconnected with the State. It differed in kind from any of the other banks existing at that time. The successful institution of the Bank of England led to a project being formed to establish a Bank in Scotland. A merchant of London, Mr. John Holland, was the author of the scheme, and he got eleven Scotch merchants to join him. They obtained an Act of the Scotch Parliament on the 17th July, 1695, authorising the Crown to grant them a Charter of Incorporation. The principle provisions of this Act are as follows:*

I. The joint stock was to be £1,200,000 Scots, or £100,000 sterling, and authorises certain persons to receive subscriptions for not less than £1,000 Scots (£83 6*s.* 8*d.*), nor more than £20,000 Scots (£6,666 13*s.* 4*d.*) for each person, with a deposit of 10 per cent.

II. They were allowed to lend on real or personal security, at not more than 6 per cent.; and, on failure of payment, to sell or dispose of the security publicly

III. They were allowed to transfer their stock freely, or by will

IV. No dividend to be made, but by consent of general meeting

V. The joint stock to be free from all taxes affecting money for 21 years from that date

* *Acts of the Parliament of Scotland, vol.* ix., *p.* 494.

VI. It was declared to be illegal for any other Company to set up banking for 21 years

VII. Various legal privileges were granted for the more speedy and effectual recovery of debts due to the bank

VIII. Prohibits any sum to be withdrawn from the joint stock

IX. Prohibits the Company, directly or indirectly, from using or employing the joint stock of the Bank, or any of its profits, in any other trade or commerce, except the trade of lending and borrowing money upon interest, and negociating bills of exchange

X. Prohibits the Company from purchasing land, or heritages, or advancing money to the Government, upon the anticipation of any sums to be granted by Parliament, except only those particular ones upon which a credit of loan should be authorised by Parliament, under the penalty of forfeiting triple the amount, of which one-fifth to the informer

XI. All foreigners who subscribed to the joint stock, were *ipso facto* naturalised to all intents and purposes. It was also provided that two-thirds of the stock must always belong to persons residing in Scotland. The Scotch subscription of £800,000 Scots (£66,666) was begun in November, and filled up at the end of December, 1695. The English subscription of £400,000 Scots (£33,333) was taken up in one day in London, a great part by Scotchmen. As the Scotch at that time were supposed to know nothing about banking, it was also provided that for a certain number of years the Governor and twelve Directors should be English, and the Deputy-Governor and twelve Directors should be Scotch. However, it was soon found that the Scotch were such good managers, that this arangement was changed, and all the Directors were Scotch, and thirteen trustees were chosen to manage the English business and affairs in London

2. No sooner was the Bank fairly established, than, in 1696, the African Company attempted to set up the trade of banking, in defiance of the Bank's privilege. This was the celebrated Darien Company, which was organised by William Paterson, who was one of the founders of the Bank of England. Mr. Holland was Governor of the Bank, but so little was it thought of, that it did

not venture to vindicate its privileges against the African Company for which there was a national frenzy, and which afterwards ended so sadly. The Bank was obliged to content itself by strengthening its position by calling up two-tenths of its capital

The African Company soon, however, burnt its fingers with banking, as, in order to rival the Bank, they advanced their notes with great imprudence to several of their own shareholders and others, and sustained great losses, which made them stop. The Bank then began the business of exchanges, but, finding that they could not compete with private merchants, gave it up. In 1696, they opened branches at Glasgow, Aberdeen, Dundee, and Montrose; but not finding them to pay, withdrew them. In May, 1698, the rivalry of the African Company being at an end, the directors repaid the two-tenths of capital last called up, as being more than necessary for their business

3. The Bank at first received no deposits from the public; its business consisted in circulating its own notes upon the credit of the subscriptions that was paid in. These notes were for £100, £50, £20, £10, and £5. It is disputed when they began to issue £1 notes, for, while a pamphlet published in 1728 on their behalf, says that they began to issue them in January, 1699-1700, Mr. Kinnear, a director of the Bank, stated to the Committee of the House of Commons that, though many proposals were made to them to circulate "tickets" or "tokens" of £1 they had always hesitated to adopt so novel an experiment till 1704. Which authority is right we have no means of deciding. In 1701 a great fire destroyed the Parliament Close, in which the Bank was, but the cash and all the effects were safely removed into the Castle by the Earl of Leven, who was Governor of both

In December, 1704, soon after, as it would appear by one account, that they had issued £1 notes, a rumour was spread all over the kingdom that the Privy Council were going to raise the value of coin, which caused a run upon the Bank, and at last it was obliged to stop payment. A meeting of the proprietors was held, who declared that all their notes should bear interest until they were paid. The directors also requested the Privy Council to appoint a Committee to examine their books. They reported that the Bank was in the most sound and flourishing condition,

and their notes then passed without depreciation. The directors made a call of one-tenth, and in less than five months paid off all their notes with interest

By the Act of Union between England and Scotland, it was stipulated that the coinage of Scotland should be reduced to uniformity with that of England, and the loss or deficiency to private individuals made good out of the Equivalent fund. (Art. XV.) The Bank assisted this operation by receiving all the old money and giving their own notes, or new money, in return, receiving a commission of half per cent. This was sucessfully accomplished without any disturbance

In September, 1715, the rebellion broke out, which immediately caused a run upon the Bank, the directors themselves urging it on, that the money might not fall into the hands of the insurgents. They then stopped, retaining all the money belonging to the Crown, which was about £30,000, which they lodged in the Castle. They then gave notice that all their notes should bear interest, as had been done in 1704. In May, June and July, 1716, they were all called in and paid. In this year the monopoly of banking granted by their charter expired, and no steps were taken to renew it

It appears that up to this time the profits of the Bank were enormous. A rival pamphlet states that the dividend was 35, 40 and 50 per cent., and, accordingly, as we may well suppose, these profits attracted rivals. A cry was got up against them, that they were too niggardly in advancing loans, that they exacted too high interest, and that the concern was altogether too small

4. In December, 1719, proposals were made to them to unite with the proprietors of the Equivalent fund, to the amount of £250,000, so as to increase the capital to £350,000, and share the annual grant of £10,000 (being four per cent. on the amount) in the proportion of two-sevenths and five-sevenths. But as the Bank had only one-tenth paid up, the proprietors of the Equivalent fund were to draw out of the Bank, as might be agreed upon, nine-tenths, or £225,000, in notes, so that there might be a capital of £35,000 to bank upon

The Bank replied that—1*st*, They had no power by their Act to amalgamate with the Equivalent, as they were limited to

£100,000 sterling; *2ndly*, That they would not unite at par with the Equivalent at four per cent., while their own stock was worth at least ten per cent.; *3rdly*, That the stock of the Bank was large enough for the country; and, if they wanted it enlarged, they could do it themselves by calling on their proprietors. They also gave other calculations, shewing the absurd nature of the proposals

No sooner were the advances of the Equivalent proprietors repulsed than another set of persons began another rough wooing, to thrust themselves into a union with them. The *Edinburgh Society*, formed on a pretended plan of insuring against fire, tried to force a junction with them, and being defeated in this, they tried to get up a run upon them. They got together £8,400 of their notes, and spread a report of a run. This, however, failed; and shortly after the Bubble Act passed, by which the society found that they were an illegal company, and were obliged to dissolve themselves. The London Assurance Company then "proposed" to them, but met with a similar refusal

5. At the time of the Union a considerable number of persons, both civil and military, were creditors of the State, and the Equivalent sum stipulated in the Act of Union was not sufficient to discharge their claims. In 1714 they obtained an Act of Parliament, constituting their debts, but no Parliamentary provision was made to pay it till 1719, when £10,000 was set apart for that purpose, to be paid annually, in preference to all other claims. The Act of 1719 empowered His Majesty, by letters patent, to incorporate the proprietors of this debt into a body politic and corporate—a **Monte**—with powers to do and perform all matters appertaining to them to do, touching or concerning the said capital sum; and the yearly fund, payable in respect thereof, as His Majesty, by the said letters patent, should think fit to grant. In pursuance of this Act, the proprietors, who included persons in all ranks of the State, were incorporated in 1724; and, by the same letters patent the King agreed and covenanted with the corporation that he would, from time to time, grant them such other powers, privileges and authorities as he lawfully might

This was the body of persons whom we have seen attempt to

force themselves on the Bank of Scotland. When they were repulsed by that body, they determined to apply to the King to grant them powers of Banking in Scotland, in pursuance of his agreement to grant them any powers that he lawfully might. They accordingly petitioned him to grant them powers to bank in Scotland, limited to such of the company as should on or before Michaelmas, 1727, subject their stock to the trade of banking. This petition came to the knowledge of the Bank in 1726, and, of course, they did everything they could to oppose it. A cry was got up against them that they were hostile to the House of Hanover—that they charged too high interest for their loans—that they were too particular in the securities they required—that they would not lend on their own stock, and other things. To all these various charges, they, or a friend for them, elaborately replied, and they said that such a thing as two banks in one country was never heard of—that if Scotland had two England should have ten. By this time they had called up 3-10ths of their stock, or £30,000, and they alleged that that was sufficient to circulate all the credit that could be required in Scotland. They had some sound views on the subject—"For the quota of credit in a banking company must be *proportioned to the stock of specie in the nation*, learned and understood by long experience, and not extended to a capital stock subscribed for, which cannot in the least help to support the company's credit if the specie of the nation decay"

The call that had been made was partly paid up in the Bank's own notes, just as we shall see that the subscription to the new stock of the Bank of England was partly paid in its own depreciated notes. An outcry was made about this, but it was well answered—"But the objectors do not at all consider this point. For the payments are many of them made in specie, and bank notes are justly reckoned the same as specie when paid in on a call of stock, *because, when paid in, it lessens the demand on the Bank.*" He also says—"A certain stock of specie circulating in the country is needful for currency of payments in markets, and amongst the meaner sort of people, bearing a due proportion to what is running on paper credit upon the faith of the Banking Company." Excellent doctrines, in strict accordance with the principles which made the Parliament of Scotland reject

the plausible and delusive schemes of Dr. Chamberlen and John Law, for issuing paper based upon land

Notwithstanding the opposition of the Bank of Scotland, the charter, with powers of banking, was granted to the Equivalent Company on the 31st May, 1727. The King's death on the 11th June following delayed it for a short time, but it was sealed on the 8th July. The Company took the name of the **Royal Bank** and commenced business on the 8th December, 1727, with a capital stock of £151,000

Granting that all the charges against the old bank were futile and groundless, we may well rejoice that the monopoly of the Bank of Scotland was not permitted to subsist. A writer, who professes to be independent of either bank, touched the right point in reply to the statement put forth on behalf of the old bank—"The power of monopolies is, I believe, an exploded doctrine. . . . Did ever any nation make an exclusive bank perpetual, or for longer than twenty-one years? Or if such an instance can be given, was the measure right? . . . If the old bank should reply—We are in possession, what have we done to deserve to have our possession disturbed? The answer upon that abstract question is plain by another question—*What have we, the other subjects, done to be secluded? or by what law are we secluded from the advantages you enjoy?*" The writer then says, after comparing the rival companies—"The obvious reflection which arises from comparing these two is, that these candid and fair dealers have also dealt profitably for themselves (as it is but reasonable that they should), they have taken very good payment for all the services they have done to the nation, *and what title they, or any other set of men, have to an hereditary or indefeasible monopoly of banking is hard to understand.* . . . As ready as our Parliament was at the Union to accommodate petitioners, *a perpetual monopoly of banking was a thing so manifestly pernicious, that no private men could have the assurance to aim at it, far less could any Parliament be so unthinking as to grant it.*" On the south of the Tweed there was found a Parliament so unthinking as to grant a monopoly of banking to a single company for upwards of 130 years, and the consequences fully justified the opinions of the sagacious Scot

The directors of the company were authorised to make calls

upon the proprietors, to the amount of one-half of their stock, but there were no means given of enforcing the calls beyond retaining the accruing dividends until the call was satisfied. They got, however, great assistance by having £20,000 deposited with them by the Crown. This was sent down by the Government to be placed out at interest, to assist the fisheries and manufactures, and several of the directors of the Royal Bank, being among the trustees for managing the fund, voted that it should be placed in their own bank. Their charter also granted them unlimited powers of issue. The alarm and jealousy created by the establishment of a new bank happily soon wore off, as it was discovered that, so far from injuring it, the inevitable consequence followed that enlarged experience in commerce would enable us to predict; it increased the prosperity of both of them, so that the stock of the Bank of Scotland rose to 400 per cent., and that of the Royal Bank also very high

The Royal Bank had been in existence only two years, when it invented a further development of the system of banking, which, by the unanimous testimony of all persons who know that country, has done more to develope its resources, and promote its agricultural and commercial prosperity than any other cause whatever. This is the system of *Cash Credits*, or *Cash Accounts*. This system deserves the most attentive consideration, because it is entirely of the nature of *Accommodation Paper*, which has fallen into such disrepute in England, from the enormous abuse of it that has taken place. We have already, in Chapter VI., given an account of Cash Credits. In 1731, the Bank of Scotland tried again to establish branches at Glasgow, Aberdeen, and Dundee, but, after a trial of two years, was obliged to discontinue them, and the plan was not tried again till 1774

6. The unlimited power of issuing "promises to pay," placed in the hands of two hostile parties, must naturally have led to great over-issues, before they acquired sufficient experience. To protect themselves from the consequences of these over-issues, as well as from the attacks of each other, the Bank of Scotland in 1730 introduced a clause into their notes making them payable, at the option of the directors of the Bank, at the end of six months, with a sum equal to the legal interest from the time of demand to

that time. This practice was adopted by all the other banking companies, for the manifest advantages of banking were so strikingly displayed, that after the expiry of the monopoly of the Bank of Scotland, banking companies started up in all directions, and inundated the country with notes. When the holders of the notes demanded payment for them, the directors of the companies threatened that they would take advantage of the optional clause, unless the demanders would content themselves with a part of what they wanted. Moreover, as there was no restraint upon the amount of their notes, many of the companies issued notes for 10*s.*, 5*s.*, and even lower than that. In Perthshire there were notes for 1*s.* and even for 1*d.*, and the Perth Banking Company was founded partly to put an end to this nuisance. The inevitable consequence followed; these paper notes drove all the gold and silver out of the country, and the exchange with London fell. Adam Smith says—"While the exchange between London and Carlisle was at par, that between London and Dumfries would sometimes be 4 per cent. against Dumfries, though this town is not thirty miles distance from Carlisle. But at Carlisle bills were paid in gold and silver, whereas at Dumfries they were paid in Scotch bank notes, and the uncertainty of getting those bank notes exchanged for gold and silver coin had thus degraded them 4 per cent. below the value of that coin." And this was at the time when, owing to the degraded state of the English coin, the foreign exchanges were adverse to England, and the market price of gold was £4 per ounce, so that the whole depreciation of the note was about 6½ per cent. Thus we see at this time, when the Scotch bank notes were at a discount, they were, in fact, *inconvertible*, or only payable six months after demand, a circumstance of great importance, and one which must be especially observed, as this was one of the instances alluded to by Sir Robert Peel in introducing his Bank Act of 1844

The manifest consequence followed. All the gold left the country, as it always does from the excessive paper issues, and the banks were all obliged to employ agents in London constantly collecting money for them, at an expense of seldom less than one-and-a-half to two per cent. Adam Smith says—"This money was sent down by the waggon, and insured by the carriers at an additional expense of three-quarters per cent., or 15*s.* on the

£100. Those agents were not always able to replenish the coffers of their employers so fast as they were emptied. In this case the resource of the banks was to draw upon their correspondents in London bills of exchange to the extent of the sum they wanted. When those correspondents afterwards drew upon them for the payment of this sum, together with the interest and commission, some of those banks, from the distress into which their excessive circulation had thrown them, had sometimes no other means of satisfying this draught but by drawing a second set of bills either upon the same or upon some other correspondents in London, and the same sum, or rather bills for the same sum, would in this manner make more than two or three journeys, the debtor bank always paying the interest and commission upon the whole accumulated sum. Even those Scotch banks which never distinguished themselves by their extreme imprudence, were sometimes obliged to employ this ruinous resource

"The gold coin which was paid out either by the Bank of England or by the Scotch banks, in exchange for that part of their paper which was over and above what could be employed in the circulation of the country, being likewise over and above what could be employed in that circulation, was sometimes sent abroad in the shape of coin, sometimes melted down and sent abroad in the shape of bullion, and sometimes melted down and sold to the Bank of England, at the high price of £4 an ounce. It was the newest, the heaviest, and the best pieces only, which were carefully picked out of the old coin, and either sent abroad or melted down at home, and while they remained in the shape of coin, those heavy pieces were of no more value than the light, but they were of more value abroad, or when melted down into bullion at home." This passage well illustrates the quotation we have given from Aristophanes, and is admirably illustrated by what took place in France during the existence of the Assignats, and in England during the suspension of cash payments

At this period the Scotch banks had got themselves into a very alarming position, from their ignorance of the true principles of regulating a paper currency, as well as of the effect of an excessive issue of paper in depressing the exchanges, and causing an export of gold, and not perceiving that, while in this state, bringing gold into the country was like pouring water into a

sieve, or like the toil of the Danaides. They had been far too prodigal in granting cash credits, and allowing them to be converted into dead loans, without observing the rules that were specially applicable to them. And everything seemed to show that matters would get worse, as the annihilation of the last Jacobite rebellion in 1746 had freed the country for ever from the fear of internal disturbances, and numerous other companies were forming to add to the currency, which was already superabundant.

United in a common danger, the two principal banks agreed to combine their influence, and obtain an Act to remedy this, and the Statute 1765, c. 49, was passed, suppressing all notes under 20*s.* and prohibiting those to be issued with the optional clause, and enacting that all such notes should be payable to the bearer on demand. The banks also curtailed their cash credits very extensively, and called up fresh capital. Owing to these combined measures, silver immediately returned into circulation, the value of the Scotch currency was restored to par, and from that time to the present, although the issue of bank notes was absolutely free until 1845, the Scotch currency **has never varied from par**

7. The Bank of Scotland and the Royal Bank continued to be the only chartered banks till 1746, when the British Linen Company was incorporated, for the purpose of carrying on the linen manufacture, and banking in connection with it. This Company soon found it expedient to discontinue the linen part of their business and confine themselves to banking, and it has since become one of the most powerful and wealthy of the Scotch banks, but it did not introduce any new feature into Scotch banking

This is the first occasion, that we are aware of, on which that abominable system of accommodation paper, which is the sure precursor of mercantile convulsion, was fully manifested. The Scotch banks seem to have learnt a very wholesome lesson, and contracted their issues more within the bounds of prudence. This was a source of prodigious annoyance to a vast number of speculators and adventurers. The prudence which the banks exercised in discounting, not only alarmed but enraged these pro-

jectors to the highest degree. "Their own distress," says Adam Smith, "of which this prudent and necessary reserve of the banks was no doubt the immediate occasion, they called the distress of the country; and this distress of the country they said was altogether owing to the ignorance, pusillanimity, and bad conduct of the banks, which did not give a sufficiently liberal aid to the spirited undertakings of those who exerted themselves in order to beautify, improve, and enrich the country. It was the duty of the banks, they seemed to think, to lend for so long a time, and to as great an extent, as they might wish to borrow. The banks, however, by refusing in this manner to give more credit to those to whom they had already given a great deal too much, took the only method by which it was now possible either to save their own credit or the public credit of the country

"In the midst of this clamour and distress a new bank was established in Scotland, for the express purpose of relieving the distress of the country. The design was generous, but the execution was imprudent; and the nature and causes of the distress which it meant to relieve were not, perhaps, well understood. This bank was more liberal than any had ever been, both in granting cash accounts and in discounting bills of exchange. With regard to the latter it seems to have made scarce any distinction between real and circulating bills, but to have discounted all equally. It was the avowed principle of this bank to advance, upon any reasonable security, the whole capital which was to be employed in those improvements of which the returns are the most slow and distant, such as the improvements of land. To promote such improvements was even said to be the chief of the public-spirited purposes for which it was instituted. By its liberality in granting cash accounts, and in discounting bills of exchange, it no doubt issued great quantities of its bank notes. But those bank notes being, the greater part of them, over and above what the circulation of the country could easily absorb and employ, returned upon it, in order to be exchanged for gold and silver, as fast as they were issued. Its coffers were never well filled. The capital, which had been subscribed to this bank at two different subscriptions, amounted to £160,000, of which 80 per cent. only were paid up. This sum ought to have been paid in at several different instalments. A great part of the

proprietors, when they paid in their first instalment, opened a cash account with the bank; and the directors, thinking themselves obliged to treat their own proprietors with the same liberality with which they treated all other men, allowed many of them to borrow upon this cash account what they paid in upon all their subsequent instalments. Such payments, therefore, only put into one coffer what had the moment before been taken out of another. But, had the coffers of this bank been filled ever so well, its excessive circulation must have emptied them faster than they could have been replenished by any other expedient but the ruinous one of drawing upon London, and, when the bill became due, paying it, together with interest and commission, by another draught upon the same place. Its coffers having been filled so very ill, it is said to have been driven to this resource within a very few months after it began to do business. The estates of the proprietors of this bank were worth several millions, and by their subscription to the original bond, or contract of the bank, were really pledged for answering all its engagements. By means of the great credit which so great a pledge necessarily gave it, it was notwithstanding its too liberal conduct, enabled to carry on business for more than two years. When it was obliged to stop, it had in circulation about £200,000 in bank notes. In order to support the circulation of those notes, which were continually returning upon it, as fast as they were issued, it had been constantly in the practice of drawing bills of exchange upon London, of which the number and value were continually increasing, and, when it stopped, amounted to upwards of £600,000. This bank, therefore, had in little more than the course of two years advanced to different people upwards of £800,000 at 5 per cent. Upon the £200,000, which it circulated in bank notes, this 5 per cent. might perhaps be considered as clear gain, without any other deduction besides the expense of management. But upon upwards of £600,000, for which it was continually drawing bills of exchange upon London, it was paying, in the way of interest and commission, upwards of 8 per cent., and was, consequently, losing more than 3 per cent. upon more than three-fourths of all its dealings

"The operations of this bank seem to have produced effects quite opposite to those which were intended by the particular

persons who planned and directed it. They seem to have intended to support the spirited undertakings, for as such they considered them, which were at that time carrying on in different parts of the country, and at the same time, by drawing the whole banking business to themselves, to supplant all the other Scotch banks, particularly those established at Edinburgh, whose backwardness in discounting bills of exchange had given some offence. This bank, no doubt, gave some temporary relief to those projectors, and enabled them to carry on their projects for about two years longer than they could otherwise have done. But it thereby only enabled them to get so much deeper into debt, so that, when ruin came, it fell so much heavier both upon them and upon their creditors. The operations of this bank, therefore, instead of relieving, really aggravated, in the long run, the distress which those projectors had brought both upon themselves and upon their country. It would have been much better for themselves, their creditors, and their country, had the greater part of them been obliged to stop two years sooner than they actually did. The temporary relief, however, which this bank afforded to those projectors, proved a real and permanent relief to the other Scotch banks. All the dealers in circulating bills of exchange, which those other banks had become so backward in discounting, had recourse to this new bank, where they were received with open arms. Those other banks were enabled to get very easily out of that fatal circle, from which they could not otherwise have disengaged themselves without incurring a considerable loss, and perhaps, too, even some degree of discredit

"In the long run, therefore, the operations of this Bank increased the real distress of the country, which it meant to relieve; and effectually relieved from a very great distress those rivals whom it meant to supplant

"At the first setting out of this Bank, it was the opinion of some people that how fast soever its coffers might be emptied, it might easily replenish them, by raising money upon the securities of those to whom it had advanced its paper. Experience, I believe, soon convinced them that this method of raising money was much too slow to answer their purpose; and that coffers, which were originally so ill filled, and which emptied themselves so very fast, could be replenished by no other ex-

pedient but the ruinous one of drawing bills upon London, and, when they became due, paying them by other draughts upon the same place, with accumulated interest and commission. But though they had been able by this method to raise money as fast as they wanted it, yet, instead of making a profit, they must have suffered a loss by every such operation; so that, in the long run, they must have ruined themselves as a mercantile company, though perhaps not so soon as by the more expensive practice of drawing and re-drawing. They could still have made nothing by the interest of the paper, which, being over and above the circulation of the country could absorb and employ, returned upon them, in order to be exchanged for gold and silver, as fast as they issued it, and for the payment of which they were themselves continually obliged to borrow money. On the contrary, the whole expense of this borrowing, of employing agents to look out for the people who had money to lend, of negotiating with those people, and of drawing the proper bond or assignment, must have fallen upon them, and have been so much clear loss upon the balance of their accounts. The project of replenishing their coffers in this manner may be compared to that of a man who had a water pond, from which a stream was continually running out, and into which no stream was continually running, but who proposed to keep it always full by employing a number of people to go continually with buckets to a well at some miles' distance, in order to bring water to replenish it

"But, though this operation had proved not only practicable but profitable to the bank, as a mercantile company, yet the country could have derived no benefit from it; but, on the contrary, must have suffered a very considerable loss by it. This operation could not augment in the smallest degree the quantity of money to be lent. It could only have erected this bank into a sort of general loan office for the whole country. Those who wanted to borrow must have applied to this bank, instead of applying to the private persons who had lent it their money. But a bank which lends money, perhaps, to 500 different people, the greater part of whom its directors can know very little about, is not likely to be more judicious in the choice of its debtors than a private person who lends out his money among a few people, whom he knows, and in whose sober and frugal

conduct he thinks he has good reason to confide. The debtors of such a bank as that whose conduct I have been giving some account of were likely, the greater part of them, to be chimerical projectors, the drawers and re-drawers of circulating bills of exchange, who would employ the money in extravagant undertakings, which, with all the assistance that could be given them, they would probably never be able to complete, and which, if they should be completed, would never repay the expense which they had really cost, would never afford a fund capable of maintaining a quantity of labour equal to that which had been employed about them. The sober and frugal debtors of private persons, on the contrary, would be more likely to employ the money borrowed in sober undertakings, which were proportioned to their capitals, and which, though they might have less of the grand and the marvellous, would have more of the solid and the profitable, which would repay with a large profit whatever had been laid out upon them, and which would thus afford a fund capable of maintaining a much greater quantity of labour than that which had been employed about them. The success of this operation, therefore, without increasing in the smallest degree the capital of the country, would only have transferred a great part of it from prudent and profitable to imprudent and unprofitable undertakings"

8. This bank, to which this long extract refers, was the celebrated Ayr Bank, which was founded to remedy the alleged distress caused by the niggardly conduct of the existing banks. It was started by a company which comprised the Duke of Hamilton and many other landed proprietors of immense wealth, and it was based on the fatal delusion that, because the capital and property of its proprietors was undoubted, it might therefore issue notes to any amount without depreciation. This was exactly John Law's theory of money, and this bank is a pregnant instance of its fallacy. The pamphlet we have already quoted from, relating to the Bank of Scotland, had already seen and denounced this fallacy, for it said, with perfect truth and wisdom, *that no matter what the capital of a banking company is, the Paper Credit, in the shape of Notes, which it can circulate, bears a certain proportion to the existing specie in the country,* and this can only

be ascertained by experience. Now this strikes at the root of John Law's whole theory, because that is based upon the fallacy that bank notes only *represent* property, and therefore may be multiplied to the extent of any existing property without depreciation—a theory whose results may be seen in the history of the Assignats; whereas the real truth and fact is, that bank notes do not *represent* any property whatever, but are themselves independent entities, and can only maintain their value, like any other independent entities, by bearing a certain proportion to the specie. Nor is Adam Smith correct in what he says, that the operations of banking do not increase the capital of the country; there is no more delusive fallacy than this in Economics; it is just because banking *does* increase capital so rapidly that it is so dangerous. It is just for the very reason that bank credits, whether in the form of promissory notes, or entries and cheques, perform exactly the same functions, and are in all respects equivalent to the creation of so much additional capital, that they so fatally depreciate the value of the existing specie, if they are multiplied too rapidly. The fatal error of the Ayr Bank, and of Law's theory is this, *not* that capital might be increased by banking, but in not perceiving the *true natural limits to the increase*—and in not seeing that the true limits were to be found in its maintaining an equality of value with gold and silver. This unfortunate concern was supposed to have been insolvent within a fortnight after it commenced business. Its mistaken course inflated speculation; the accommodation bill system, which has been the cause of every commercial crisis from that time to this, promoted by this bank and other speculators, formed the exact antetype of the proceedings of the Western Bank and its herd of adventurers in 1857. The exports of 1771 and 1772 rose to a height they had never done before, and which they did not again equal till 1787. While commerce was in this apparently prosperous, but in reality bloated and diseased condition, the puncture of a pin was sufficient to make it collapse. On the 10th June, 1772, a partner of one of the greatest firms in London, Neale & Co., decamped with £300,000, having been deeply engaged in speculation in funds. This man, named Fordyce, was a Scotchman, and had a large Scotch connection; these were blown upon by the failure of their London agent, and a complete com-

mercial panic began. The Ayr Bank had branches in Edinburgh and Dumfries, and a run began upon it on the 17th June, 1772, in Edinburgh, and it stopped payment on the 25th, along with a crowd of speculators. The whole of Scotland was shaken to its foundations. The paper of the Ayr Bank in circulation amounted to £800,000. There had been no disaster similar to it since the Darien scheme, and there has been none since like it, until the failure of the Western Bank. The credit even of the other banks was almost gone. Besides the three Public Banks, only three of the private ones survived. The person who was the immediate cause of the collapse of the rotten bubble of credit being a Scotchman, the London papers teemed with tirades of abuse of everything Scotch

A writer in one of the papers says that the accommodation bill system first sprung up then. In the *Public Advertiser*, July 8th, 1772, it says in a letter—"Banking companies have appeared in almost every corner of the kingdom, and bills of exchange have been multiplied by a new method called *Swivelling*, without any solid transactions." Adam Smith, however, places it earlier. Speaking of the refusal of the banks to discount to the extent the speculators wished, he says—"Some of those traders had recourse to an expedient, which for a time served their purpose, though at a much greater expense, yet as effectually as the utmost extension of bank credits could have done. This expedient was no other than the well-known shift of drawing and re-drawing; the shift to which unfortunate traders have sometimes recourse to when they are on the brink of bankruptcy. *The practice of raising money in this manner had long been known in England*, and, during the course of the late war, when the high profits of trade afforded a great temptation to over-trading, is said to have been carried on to a very great extent. From England it was brought to Scotland, where in proportion to the very limited commerce, and to the very moderate capital of the country, it was soon carried on to a much greater extent than it ever had been in England. The practice of drawing and re-drawing is so well known to all men of business that it may perhaps be thought unnecessary to give an account of it." And yet a respectable witness, Mr. Latouche, deputed by the private bankers of Dublin to give evidence before the Committee of the House of Commons

in 1858, says that the accommodation bill system "arose from a new element, which, when the Act of 1844 was made, did not exist at all, and that was the immense amount of deposits in the hands of Joint Stock Banks paying interest!!"

9. In 1774, by the Statute of that year, c. 32, the Bank of Scotland was authorised to double its capital stock, and the limit which any shareholder might hold was raised to forty shares. In this year the bank began successfully to establish branches, which has since become so marked a feature in Scotch banking. In 1784, by the Statute of that year, c. 12, the capital of the bank was raised to £300,000, and all restrictions as to the amount of stock any proprietor might hold taken off. In 1792, by the Statute of that year, c. 25, the capital was raised to £600,000, and by Statute, 1794, c. 19, to £1,000,000, and by Statute, 1804, c. 23, to £1,500,000, of which £1,000,000 has been called up, and at which it still remains

10. The next great commercial crisis was in 1793. This also extended to Scotland. This was attributed by the best contemporary writers to the inordinate multiplication of the country bankers and the commencement of the revolutionary war. This crisis was most severely felt in Glasgow. Numbers of the most wealthy firms, both commercial and manufacturing, failed. The Glasgow Arms Bank, one of the three oldest in the city, stopped on the 14th March. Three-fourths of the country bankers in England were greatly shaken. The Bank of England refused all assistance, in spite of all solicitations made to it, for which it is severely blamed by Sir Francis Baring and the Bullion Report. When the Bank adopted this perverse course, universal failure seemed imminent. Sir John Sinclair remembered the precedent of 1697, when Montague had sustained public credit by an issue of Exchequer bills, and thought that a similar plan might be followed in this crisis. Mr. Pitt desired him to propose a scheme for the purpose, which he presented on the 16th April. A Committee of the House of Commons was immediately appointed. In the meantime a director of the Royal Bank of Scotland came up, with the most alarming news from Scotland. The public banks were wholly unable, with due regard to their own safety,

to furnish the accommodation necessary to support commercial houses and the country bankers. That, unless they received immediate assistance from Government, general failure would ensue. Numerous houses, which were perfectly solvent, must fall, unless they could obtain temporary relief. Mr. Macdowall, M.P. for Glasgow, stated that the commercial houses and manufactories there were in the greatest distress, from the total destruction of credit. That the distress arose from the refusal of the Glasgow, Paisley, and Greenock Banks to discount, as their notes were poured in upon them for gold. This panic was allayed by the Government consenting to issue small Exchequer bills, and by the activity of Sir John Sinclair in getting money sent down to Glasgow in anticipation of these Exchequer bills

An idea of the great severity of this crisis may be formed from the interesting memoirs of Sir William Forbes, of the history of that house. He says, p. 80, speaking of deposit receipts—

"In ordinary times the number paid and granted are pretty much the same

"Amount paid above granted, in			December,	1792,	£10,670
„	„	„	January,	1793,	16,916
„	„	„	February,	„	11,561
„	„	„	March,	„	52,961
„	„	„	April,	„	105,075
„	„	to 23rd	May,	„	66,541
					£263,724

"The diminution on current account balances was in proportion, that is, nearly as much more"

11. The news of the suspension of cash payments by the Bank of England reached Edinburgh by express on the 1st of March. An immediate run on the banks took place. The managers of the public banks waived all etiquette, and met at Sir William Forbes's to consider what was to be done. It was agreed to follow the example of the Bank of England, and suspend all payments in specie. A meeting of the principal inhabitants was called by the Lord Provost, and attended by the Lord President of the Court of Session, the Lord Chief Baron

of the Exchequer, the Lord Advocate, and the Sheriff of Edinburgh. The meeting came to a unanimous resolution to support the credit of the banks, and to receive their notes as specie. This resolution was advertised in the papers, and expresses sent off to the principal towns in the kingdom to inform them of it

The suspension of cash payments gave rise to terrible scenes of confusion and uproar. The doors of the banks were besieged by crowds, clamouring for gold and silver in exchange for notes. The demand for small change by the lower classes was most urgent. They adopted the plan of dividing the £1 notes into halves and quarters. Spanish dollars, stamped by the Mint, were issued at 4*s.* 6*d.*, and quarter guineas were coined. An Act was speedily passed, to allow those banks which had been in the habit of issuing notes to issue 5*s.* notes for a limited period. The panic was allayed, and confidence quickly returned. The notes were received as readily as ever, though the banks refused to cash them; and, what was somewhat remarkable, no attempt was ever made by the people to compel them to pay specie, and not a single action was brought against them, although they were entirely unprotected by any Act of Parliament, and in a short time business proceeded more prosperously than ever

12. The next occurrence that we may mention, as it was regarded as a political event, was the foundation of the Commercial Bank in 1810. This was at the time when the high Tory *regime* was in its highest and palmiest state, and the banks were alleged to carry their politics into their business. The Liberal party then determined to found an opposition bank, which was named the Commercial, which has attained as great an eminence as any of the older ones in public estimation. Its capital, as yet paid up, is £1,000,000, which, its directors very recently gave the satisfactory assurance to its shareholders, is perfectly intact, and in addition to that, it has £400,000 of accumulated profits as a reserve fund. This bank subsequently obtained a charter, but the liability of its shareholders is specially declared unlimited

In 1818, it being found that many foreigners availed themselves of the privileges of naturalisation, by purchasing stock in the Bank of Scotland, this clause in their original Act was repealed.

13. The long and dreadful catalogue of banking failures in England, chiefly owing to the monopoly of the Bank of England, and which were attributed to the issues of the £1 notes of the country bankers, made the Ministry of 1826 desirous to abolish them in Scotland and Ireland, at the same time as they did those of England. But this raised such a ferment in the country that the Government consented that Committees of both Houses should be appointed to inquire into the matter. The result was so eminently favourable to the Scotch banking system that no further interference was attempted. "With respect to Scotland," says the report of the Lords, "it is to be remarked that during the period from 1766 to 1797, when no small notes were by law issuable in England, the portion of the currency of Scotland in which payments under £5 were made continued to consist almost entirely of notes of £1 and £1 1*s.*, and that no inconvenience is known to have resulted from this difference in the currency of the two countries. This circumstance, among others, tends to prove that uniformity, however desirable, is not indispensably necessary. It is also proved, by the evidence, and by the documents, that the banks of Scotland, whether chartered or joint stock companies, or private establishments, have for more than a century exhibited a stability which the Committee believe to be unexampled in the history of banking; that they supported themselves from 1797 to 1812 without any protection from the restriction by which the Bank of England, and that of Ireland, were relieved from cash payments; that there was little demand for gold during the late embarrassments in the circulation; and that in the whole period of their establishment there are not more than two or three instances of bankruptcy. As during the whole of this period a large portion of their issues consisted almost entirely of notes not exceeding £1, or £1 1*s.*, there is the strongest reason for concluding that, as far as respects the Banks of Scotland, the issue of paper of that description has been found compatible with the highest degree of solidity; and that there is not, therefore, while they are conducted upon their present system, sufficient ground for proposing any alteration, with the view of adding to a solidity which has so long been sufficiently established." The report of the Commons was also adverse to any legislative interference with Scotch banking

14. No interference with Scotch banking took place till 1845, when Sir Robert Peel, having carried his Bank of England Charter Act and Joint Stock Banking Act with scarcely a breath of opposition, determined to regulate those of Scotland and Ireland as well. The principal provisions of this Act, Statute 1845, c. 38, are as follows—

I. All persons had been prohibited by the Statute 1844, c. 32, from commencing to issue notes after the 6th May, 1844, in the United Kingdom, and all such persons in Scotland as were lawfully issuing their notes between the 6th May, 1844, and the 1st May, 1845, were to certify to the Commissioners of Stamps and Taxes the name of the firm and the places where they issued such notes

II. The Commissioners were to ascertain the average number of such bankers' notes in circulation during the year preceding the 1st May, 1845

III. Such bankers were authorised to have in circulation an amount of notes, whose average for four weeks was not to exceed the amount thus certified by the Commissioners, together with an amount equal to the average amount of coin held by the banker during the same four weeks. Of the coin three-fourths must be gold and one-fourth silver

IV. In case the bank exceeds the legal amount, it is to forfeit the excess

V. If two or more banks unite, they are authorised to have an issue of paper to the aggregate amount of issues of the separate banks, as well as the amount of the coin held by the united bank

VI. Notes of the Bank of England not to be legal tender in Scotland

The reader will see that there are some striking points of difference between the restraints laid upon the English and Scotch banks, for, while the former are bound down to an absolute fixed limit of issue, the latter are permitted to issue to any amount, provided they hold an equal amount of coin above their authorised amount. Moreover, if any number of banks unite, they may have an aggregate authorised issue, equal to that of the separate banks; but in England, if the number of partners of the united bank exceeds six, they forfeit their power of issuing notes

altogether. This absurd restriction as to the number of partners in a bank never had any force in Scotland

15. The year 1857 was remarkable for a calamity, to which there had been no precedent except the Ayr Bank, namely, the suspension of two very large joint stock banks, the Western Bank and the City of Glasgow Bank. The latter, indeed, has resumed business, and on an investigation of its affairs, it appeared that, out of a capital of above £800,000, it had lost about £70,000; having thus a very large paid up capital intact, it resumed business, and it might have been hoped that after having received this severe lesson, its business would have been conducted on better principles in future. But the Western Bank was found to have lost not only the whole of its paid-up capital, £1,500,000, but nearly as much more besides. This Bank was founded in 1832, so that, in the course of twenty-four years, it lost £3,000,000 of money. The Ayr Bank, in two years and a half, lost £400,000, so that, of the two the latter is proportionably the more severe calamity. The failure of the Western Bank, however, has called forth the most bitter attacks upon the general system of Scotch banking, which we shall find to be totally unmerited, because it is clearly proved, in the evidence given before the Committee of the House of Commons in 1858, *that during the whole course of its career, it pursued a system which was diametrically opposed to the usual course of the other Scotch banks*

The Western Bank began business in 1832, and in the next year had a paid up capital of £209,170, which was increased year by year, till, in 1849, it amounted to £1,792,850, at which it continued till 1852, when a number of shares having fallen into the Bank's hands by bankruptcy and insolvency, they were written off against the capital, which was thus reduced to £1,500,000, at which it continued till the closing of the bank. The mode of business adopted by this bank, from the beginning, was not according to the usual plan of Scotch banking, for while, as explained by the witnesses before the Committee of 1858, one very important feature of it is to keep very large reserves in London, either at their bankers or in Government securities, the Western Bank invested its means chiefly in local accommo-

dation, and kept very insufficient reserves in London, so much so that in 1834 its London agents, Messrs. Loyd & Co., dishonoured its drafts. It appears that upon this the other Scotch banks refused its notes, and remonstrated with it for its mismanagement. On the 30th October, 1834, the directors, in answer to these remonstrances, notified to the other banks that they had resolved to invest, in marketable securities, a sum amply sufficient to prevent such a thing happening again. They promised to commence the necessary operations in the following January, and complete them in April, if not earlier. They also engaged to lessen their disconnts, and to continue to do so, in order to have sufficient funds at its command. Upon this promise of better conduct in future, the three chartered banks advanced the Western Bank £100,000 to enable them to purchase these securities forthwith. Bnt the Western directors very soon broke their engagement, and reverted to their former mode of business. In 1838 they applied to the Board of Trade for a grant of letters patent, when a number of the other Scotch banks presented a joint memorial against it. They said that they should be wanting in their duty to the public, as well as their own constituents, if they sanctioned by their silence such an application—"The fact is well known to you, that while there have occurred, during the past fifty years, periodical convulsions among the banks in England, which have led to the failure of several hundreds, Scotland has, for the most part maintained a state of general tranqnility, and there have, in the same time, occurred only three or four failures, and those of a very minor character. The cause of this is notoriously owing, first, to the large capital employed in the Scotch banks, and, second, to the system of administration adopted. Capital alone, as has been recently experienced in England, by extending the scale of operations, may only increase the mischief. In the like manner a numerous proprietary, constituting a protection to the public against eventual loss, may, by adding to the credit, add to the power of such an institution for evil. The safeguard of the Scotch system has been the uniform practice adopted of retaining a large portion of the capital and deposits invested in Government securities, capable of being converted into money, at all times and under all circumstances. This requires a sacrifice, because

the rate of interest is small, and, in times of difficulty, the sale involves a loss, but it has given the Scotch banks absolute security, and enabled them to pass unhurt through periods of great discredit

"It is not then unreasonable that the managers of the Scotch banks should look with favour on a system which, notwithstanding their close connection with England, has exempted them from these calamities, and, in the doubt that exists on banking theories elsewhere, it is at this moment sufficient to say that the system established in Scotland has worked well, and ought not to be disturbed there

"The Western Bank was established in the year 1832, and the principle on which it has avowedly acted has been to employ as much as possible of its capital and assets in discounts and loans, retaining only the cash necessary to meet its current engagements

"As this is a more profitable investment than Government securities, there is always a strong temptation to speculative or inexperienced persons to adopt this course, and if the consequences were to affect themselves alone, it would be of small moment, but unfortunately, in banking, this cannot be. The whole system depends upon credit, and the failure of an ill-regulated establishment affects those differently constituted. Such a body, in prosperous times, boldly extends its business, and, from seeing the readiness with which in such seasons commercial paper is discounted, comes to the conclusion that it is the best and most convertible description of investment that could be found

"Prudent banks, knowing the delusive nature of this expectation, are compelled to increase their own reserve to meet the consequences of this unwise expansion; and, when the difficulty comes, they must either assist their rival to prevent an explosion, or must make a heavy sacrifice by selling their securities at a loss

"The Western Bank, acting on this principle, allowed their London transactions to assume such an irregular shape that their London agents, the respectable house of Jones, Lloyd & Co., took alarm, and in 1834 dishonoured their drafts. The Bank of Scotland, Royal Bank, and British Linen Company were compelled to come to their assistance, and made them con-

siderable advances. These circumstances occurring in a time when the money market was perfectly tranquil, shewed the extreme danger of the practice. The Edinburgh banks insisted on a better system of management being adopted, and that the Western Bank should have invested in Government securities a sum amply sufficient to meet emergencies. The Directors, after much discussion, at length, by a resolution dated 30th October, 1834, distinctly assented to the requisition, but, as they had so engaged the assets of the Bank as to render it impossible immediately to procure the funds, the Edinburgh banks lent them £100,000 for the purpose. *For some time the Western Bank may have acted on this agreement, but the temptation of profit appears to have got the better of their prudence, and they now repudiate their engagement*

"It will be quite apparent that a bank that can employ its whole funds in this manner is enabled either to divide a larger share of profits than its competitors, or to do business on more favourable terms; and we repeat, that if the only consequence of this was to increase or diminish the dividends of the rival establishments, it would be of comparatively small importance, but in its result it endangers the existence of every bank in the country and the fortunes of a large portion of the community. We feel that, if letters patent shall be granted to this bank, after what has passed, *it will be a public sanction and countenance of a new and mischievous principle, opposed to the banking system of Scotland*

"The question is not, in this instance, whether Government will interpose new restraints on banking companies, but whether they will encourage a violation of the old system, by granting distinction and privileges to a company which, having pledged itself to their observance, now disowns them in its practice, and under these circumstances applies for a charter." This memorial was signed by the Bank of Scotland, the British Linen Company, the Commercial and National Banks; and the charter, if applied for, never was granted

This system of keeping such small reserves in London produced the consequence foreseen in the preceding memorial. In 1847 the Western Bank was in difficulties, and received assistance from the Bank of England to the amount of £300,000 in No-

vember and December, 1847, which it repaid in March, 1848. From this time forward till 1852, when a change in the management took place, a rather more cautious course was pursued, but they did what we believe was totally contrary to the usual practice of the other Scotch banks—they rediscounted. The following figures shew the amounts of discounts and rediscounts from 1847 to 1852—

	Discounts.	Rediscounts.
In 1847	£15,711,438	£656,077
„ 1848	12,088,643	374,707
„ 1849	10,522,022	249,957
„ 1850	12,048,669	290,813
„ 1851	13,322,753	588,247
„ 1852	13,525,332	407,143

At this time the Bank had £356,000 of overdue bills, besides other very heavy locks-up of capital, in one case amounting to £120,000, which was covered with insurances on the lives of the obligants, on which it had paid £33,512 as premiums when it stopped. "But even at this time," says Mr. Fleming, "it had a cluster of those people who had manufactured accommodation bills, doing business with them." So that in this year, he says, the Bank was not in a satisfactory state

In 1852 a new management commenced, and to shew how the practice of rediscounting increased, we give the following figures—

	Discounted.	Rediscounted.
In 1853	£14,987,740	£1,682,320
„ 1854	18,596,704	4,856,292
„ 1855	19,835,781	4,969,669
„ 1856	20,410,884	5,407,363
„ 1857 till Nov. 9	20,691,415	4,881,221

Thus we see the enormous increase of this most perilous practice during these years, a practice which places the existence of any institution that depends upon it to any great extent, at any moment at the mercy of the will, the caprice, or any accident that may happen to the purchaser of its bills

But this was by no means the only instance of reckless

management. Over and above all the other embarrassments, there were four accounts particularly to which the subsequent calamity was due; we will shew the state of these accounts in 1852 and 1857—

1852.	Discounts.	Overdrawn Account.
Macdonald & Co.	£107,116	... —
Menteith & Co.	83,779	... 3,523
Wallace & Co.	18,144	... —
Pattison & Co.	89,678	... 1,154
	£188,717	£4,677

Shewing that these four firms were under obligations to the Bank in 1852 to the amount of £193,394. The following was the state of the same accounts in 1857—

	Discounts.	Overdrawn Account.	Overdue Bills.
Macdonald.....	£408,716	£5,636	£8,526
Menteith	376,799	67,635	93,129
Wallace	227,464	—	—
Pattison	336,996	67,253	11,571
	£1,349,975	£135,524	£113,226

Being a sum total of £1,603,725 to these four houses alone, when they failed. And, to shew the character of the bills discounted for these firms, of £402,716 bills of Macdonald's current at the time of their failure, £398,349 were dishonoured at maturity; of Menteith's, £376,699 current at their failure, £269,726 were dishonoured at maturity; of Wallace's, of £226,741 current, there were dishonoured £209,534; and of Pattison's, of £336,996 current, there were dishonoured £150,749

Soon after the general meeting of June, 1857, the directors requested another person to examine the Bank's books, who, after doing so, and allowing all the current business of the Bank to be good, including the above four firms, found that bad debts to the amount of £573,000 were kept on the books as good, which, after deducting the rest and guarantee fund, amounting

to £246,000, made a loss of £327,000 in the capital of the Bank, and the advances to the shareholders, holding 7,626 shares in the Bank, amounted to £988,487. In the month of September, 1857, Mr. Fleming, the person whom the directors had requested to assume the temporary management of the Bank, began seriously to inquire into the nature of these immense accounts, and on the 7th the Wallaces acknowledged that they were dealing in accommodation bills, and he saw that the Macdonalds must be doing the same thing, as the two houses were drawing on the same names. It was found that the Macdonalds drew upon 124 acceptors, only 37 of whom had been inquired about, and of these, reports on 21 were extremely bad. But there were 60 or 70 persons whom they drew upon, who made it a regular trade to accept bills for a small commission; in fact, it appeared that they engaged a man in London to procure them accommodation acceptances. As soon as the true nature of these accounts was ascertained, there was no resource but to stop them. The failures of Menteith and Macdonald, which were the first that became notorious, created a panic on the Stock Exchange on the 10th October, and the price of stock rapidly fell, it being commonly reported that the whole capital of the Bank had been engaged in enabling these parties to carry on their business for a series of years. These rumours created a run on the Bank, to a slight extent, on the following Tuesday, which continued for two or three days, and during that week, ending the 17th of October, the Bank paid away about £36,000 in coin, but this was the only run for gold of any amount on the Bank, for during the following week it only paid away £4,000, and in the week after that about £2,000; and the whole paid away in coin between the 10th of October and the 7th of November, the Saturday before it stopped, was only £44,000. But, during this period, the total *deposits* demanded were £1,280,000, and, except the sum above mentioned as paid in coin, *the whole of these deposits were paid in the Bank's own notes, which were immediately taken and lodged in the other banks*

This dreadful catastrophe deserves to be minutely detailed, because it is strenuously asserted by a very influential party, that the small note circulation of Scotland tends to increase a panic among its holders. But in this case, the Bank's notes in circu-

lation did not in any way increase the panic. Mr. Fleming says—"I may say that there was no run for the payment of notes all through. There may have been a few notes presented, but I should certainly limit the demand for gold in exchange for notes to £5,000 or £6,000. I do not think it would exceed that. *Mr. Wilson:* In point of fact, the whole pressure upon the Bank at any time was in respect of its deposits, and not in respect to its circulation?—*Decidedly, there was no pressure in respect to its circulation;* so much so, that during the last two days for which the Bank was in operation, I do not think £1,000 was paid away in gold at the head office. The whole money withdrawn was taken away in notes, and the consequence was that on the afternoon of the 9th November, when the Bank stopped, there was a very large amount of notes in circulation, something about £720,000. Then the depositors became uneasy about the security of their deposits, went to the Bank, and took the Bank's notes?—Yes. Did they pay them immediately into other banks?—Yes. . . . . Was there much drain in the provinces upon the balances?—Not a very large amount, certainly; a wonderfully small amount, in proportion to the total deposits, was withdrawn from the country. I think you said that at the branches there was very little demand for gold; almost none?—*Almost none*"

At the same time a very heavy blow fell upon them from another quarter. The Bank, instead of keeping its funds well in hand in London, engaged in exchange operations with America. They had an agent in New York, though, perhaps, not openly and avowedly in that character, who granted letters of credit upon them, in favour of persons who wished to raise money, such parties arranging with the agent, the securities to be lodged to meet the Bank's acceptances. These credits were not by any means always paid at maturity, but were renewed to a large extent. By this operation a very considerable portion of the Bank's funds were locked up in America, instead of being in London as they ought to have been. At the time of its suspension its acceptances current and its obligations to accept amounted to £317,000 in two months' bills, which, multiplied by six, gives the amount of the year's transactions. The amount of funds locked up in America by their agent there appears to have been

£376,520, against which he held railway bonds and current bills. Mr. Fleming said, Q. 5510—"It appears to me in many cases the credits established by Lee upon the Western Bank have been modes of raising money for the purpose of constructing American railways and for speculation in stocks in New York." "The two banks, *i.e.*, the Western and the City of Glasgow," said Mr. Robertson, the cashier of the Royal Bank, "were in the habit of accepting four months' inland bills drawn from London, Liverpool, and Glasgow, in respect of these credits, *which was quite condemned by the Bank of England, and all the other Banks in Scotland*"

The general stoppage and failure of American credit at this time rendered the expectations of any remittances hopeless from there. And Mr. Fleming, who undertook the duty of manager on the 15th October, told the directors it was absolutely essential to make provision for a contingent drain upon the deposit money, and also for the American acceptances becoming due. On the 17th October the directors resolved to apply to the Bank of Scotland. On the 21st a written application was made to that Bank for assistance, and on the 23rd a meeting having been held of all the Edinburgh banks, they declined to assist, until application had been made to the Bank of England. This application was refused. This refusal being telegraphed down to Edinburgh, a meeting of the banks was held the same evening, and they agreed to advance £500,000 on condition that the directors should dissolve and wind up the concern. After some days' negotiation the Edinburgh banks agreed to forego the compulsory winding up, as the directors of the Western said that they had no power to do so, and advanced the money without this condition. This sum was accordingly advanced on the 29th October, on the promissory notes of the Western Bank, at six months' date, for £510,000, the terms being that the Western Bank should be bound to replace the Edinburgh banks in Consols at the price of the day. In addition to the loan so advanced by the Edinburgh banks, the Clydesdale Bank advanced £100,000 on a note of the Bank's at six months, with the individual guarantee of the directors, which was discounted at the current rate of 8 per cent.

The withdrawal of the deposits from the Bank, which was

almost entirely among the small depositors, had greatly abated, and, whatever might have been the ultimate result which might have been necessitated in consequence of the examination of the Bank's affairs that was then in progress, there was no *immediate* danger of a catastrophe; when, on the 29th October, the City article of the *Times* announced that the Edinburgh banks had resolved to carry the Western Bank through its difficulties, on condition that it should wind up. The *Times* reached Scotland on the morning of the 30th, and immediately a fresh pressure commenced on the Bank. But this time it was of a different character from the previous one. The first pressure had been among the small depositors, the second consisted of the traders who kept large accounts, who, seeing that the Western Bank was going to close, made haste to transfer their balances to the other banks and open accounts with them, and it was this pressure which continued and made the Bank close its doors on the 9th November, *not from a demand for gold, but because the balances of these accounts being withdrawn in the Bank's notes, and paid into other banks, the Western Bank was unable to provide for the purchase of Exchequer bills from the other banks, to rectify this balance by a draft on London*

To shew how mischievous this publication of the terms proposed was, we quote from Mr. Fleming's letter to the Bank of Scotland of 31st October, 1857—"The application made a fortnight ago by the Directors of this Bank to the other Scotch banks for a credit to the extent of £500,000, was based on my calculation that £350,000 or £400,000 would keep our London finance in perfect order, and that the remainder would be a sufficient reserve to meet any probable withdrawal of deposits. This calculation, I still believe, would have proved correct, *had the assistance required been given promptly, quietly, and free from any condition as to winding up*

"But the demands made upon us have considerably exceeded my calculation, from two causes; first, the notoriety of our financial embarrassment, created by the delay in acceding to our application, and the course which the negotiations took from our having been referred to the Bank of England; and second, the condition as to winding up, which the other banks sought to impose, and the publicity given by the *Times* to this condition

"It is not easy to say in figures to what extent these causes have respectively operated in inducing withdrawals, or to estimate to what extent they may still operate. But as to the past, my own observation here, and the reports from our branch agents, all convince me that the second has been immeasurably more mischievous than the first. *Deposits on receipts have been withdrawn to a very limited extent indeed, but balances on current accounts kept by the trading community have been removed to other banks to a considerable extent.* The reason is natural and obvious. If this Bank is to wind up, traders know that we cannot give them accommodation, and they take the earliest opportunity of arranging for that accommodation elsewhere, and withdraw their balances

"I am hopeful that the mischief already done is not irreparable. That we retain still a measure of public confidence is proved by the fact *that no fixed deposits of any large amount have been withdrawn, and nothing like a run has taken place, and gold has scarcely ever been demanded*

"I have already said that there has been no demand made upon us for gold, *all sums withdrawn having been taken in our own notes, and, consequently, the other banks have got the deposits*"

The Western Bank then asked a further loan from the Edinburgh banks, which, having been discussed for some days, was unanimously refused

On Saturday, the 7th November, there was, from the heavy withdrawal of deposits in the Bank's notes, and their lodgment with the other banks, a heavy adverse balance on the exchange of that day. The Edinburgh banks were immediately informed that the Western Bank was unable to provide for this adverse balance on the following Monday. On the Sunday they resolved as soon as this inability to pay the balance should be declared, to instruct their agents to refuse the Western's notes. *And it was beyond all question shewn that it was this injudicious line of conduct that chiefly brought on the subsequent run for gold*

The Exchange being heavily against the Western on Saturday, it made a final proposal to the Edinburgh banks, and sent a scheme for an amalgamation with the Clydesdale Bank, to be discussed by them on Monday morning, the 9th, and kept its

doors open till 2 o'clock, to learn their final decision. This being a decided refusal to entertain the terms proposed, the Western Bank shut its doors at 2 p.m., on Monday, the 9th November. Another Bank, the City of Glasgow, it was also known, had been engaged in transactions of the same nature as the Western, in America, and had also been equally negligent in keeping due reserves in London. This bank, too, required the assistance of the Edinburgh banks, though it is not stated how much they received. On the evening of the 9th a run commenced on the saving's bank branches of this bank. "On the Tuesday morning," says Mr. J. Robertson, the manager of the Union Bank, "when the doors of the banks were opened, a great number of parties appeared with deposit receipts demanding gold; in fact, the office of our own establishment was quite filled with parties within a quarter of an hour of the opening of the doors. I think at half-past 9. The *Chairman:* You are now speaking of the Union Bank?—I am speaking of most of the banks; I speak of the Union Bank particularly. Were the Western notes at that time current, or were they refused?—*They were not current, unfortunately.* Was there any deputation from Glasgow to Edinburgh on the subject of the other banks agreeing to take the Western Bank's notes?—This run, as you may call it, or panic, increased so much that *the continued refusal of the notes of the Western Bank added very much to the excitement.* Those people who came for money would not take the notes of any bank, it did not matter what bank it was; they refused everything but gold. We thought that it would allay the excitement if we were to take the Western Bank's notes, there being no danger of ultimate payment. We were so much impressed with that feeling that two of the banks sent a deputation to their directors to Edinburgh to confer with the managers of the Edinburgh banks on the subject, and to induce them to rescind their order. They failed in that; the notes of the Western Bank were refused the whole day on the Tuesday"

The run of Tuesday exhausted the City of Glasgow Bank, and it did not open on Wednesday, the 11th. The state of Glasgow was so alarming that the magistrates sent for troops, and did all in their power to allay the excitement; they issued a proclamation advising the people not to press the banks for

payment, and to take the notes of all the banks. They issued an order to all the rate collectors in the city to take all notes presented to them, including those of the two suspended banks. *But the demand for gold was almost entirely confined to the depositors, very few noteholders coming forward.* On Wednesday and Thursday large remittances of gold from London arrived about 10 o'clock in the morning, and were taken in waggons to the banks, escorted by strong bodies of police. But the run entirely ceased about 2 o'clock on Wednesday. At half-past 2, says the same witness, there were not half-a-dozen people in the establishment. The panic, as the witness said, only lasted one whole day and part of the next

In fact, the refusal to take the Western Bank's notes was one of the chief causes of the run for gold; and, as soon as the other banks agreed to take them the panic ceased. Mr. Lawrence Robertson was asked, "What was it which first caused the panic to cease?—When the stoppage of these banks took place the other banks were not precisely informed of their position, and hesitated a little in taking their notes; after further consideration the other banks resolved to take all the notes as they came forward, *and when that was done the thing subsided.* As soon as it became known that the notes of the Western Bank would be received by the general body of the banks in Scotland the panic with regard to the notes of the Western Bank came to an end?—*Entirely*"

The same witness also said that there was no run upon any of the Glasgow banks before the stoppage of the Western Bank. "Who were those parties who drew out gold over the counter in exchange for notes, or by cheques on their deposits?—It was chiefly in the case of small deposit receipts. And not for any considerable amount?—No. Do you think that it exceeded £1,000?—It is difficult to fix upon a sum; I never looked at that. It was not of sufficient importance to call your attention to it?—No." The City of Glasgow Bank resumed payment in about a month, but the Western Bank had lost not only its whole paid up capital of £1,500,000, but as much more again

16. The details of this great catastrophe well deserve our closest attention, because it is the first instance of a *banking* panic

in Scotland, and even that was confined to one town. The commercial failures were confined exclusively to the herd of adventurers who had been fostered and supported by the mismanagement of the Western Bank. There was but one house of any magnitude connected with Glasgow which suspended payment during this period, Dennistoun & Co., who were more a Liverpool and London house than a Glasgow one, and whose temporary stoppage was brought about by other causes. But this calamity has been seized hold of by persons who are hostile to the Scotch system of banking in general and also to the £1 note currency of Scotland, to condemn them. But, when we come to investigate the true facts, we shall find that they lend no support to these charges. For, with respect to the first, it is distinctly proved by the most unanswerable evidence, that from the commencement to the close of its career, the Western Bank pursued a system of business that was totally opposed to the well-recognised system of Scotch banking, and unanimously condemned by all the well-conducted banks. That, during its whole course, it was a subject of terror and alarm to the other banks. That its locking up its funds in America was totally condemned by the Bank of England and all the other Scotch banks. And the directors themselves, when, however, it was too late, acknowledged their own misconduct, for in their first application for assistance to the Bank of Scotland, on the 21st October, 1857, the directors say—"On the part of the board of direction, it is right that *we should frankly say, that they are fully alive to the recklessness of the past management of the Bank;* that its credit has been strained to the extreme point; and that, in the attempt to make large profits for the proprietary, unwise and undue risks have been run. Feeling all this, the directors have entered on a course of management, which (although the present commercial crisis renders curtailment difficult of speedy accomplishment) will eventuate in the establishment, on a secure basis, of a business of a safer *and a more legitimate, though certainly of a more limited description, than has for many years been conducted by the Western Bank of Scotland.*" *Habemus ipsos confitentes reos.* The directors themselves acknowledged that their course of business was *not* in accordance with the usual Scotch banking system. What possible reflection, then, can it be on the

recognised system that a bank, which went right in the teeth of it, failed? The very same remarks apply, only, of course, in a lesser degree, to the City of Glasgow Bank. This Bank, too, was guilty of speculating in America, instead of keeping its reserves in London; and it, too, paid the penalty by a temporary suspension.

The second charge, too, is equally groundless against the small note circulation. For it is said that these small notes aggravate a panic, and that a panic is most likely to commence amongst their holders. But, in this case, the evidence most decisively negatives the supposition that any part of the panic was due to the small notes, and not only that, *but it decisively proves that the demand for gold was greatly lessened on account of the notes.* Mr. Fleming says, Q. 5532—"I may say there was no run for payments of notes all through. There may have been a few notes presented, but I should certainly limit the demand for gold in exchange for notes to £5,000 or £6,000. I do not think it would exceed that. *Mr. Wilson:* In point of fact, the whole pressure on the Bank at any time was in respect to its deposits, and not in respect to its circulation?—Decidedly, *there was no pressure in respect to its circulation;* so much so, that during the last two days for which the Bank was in operation, I do not think £1,000 was paid away in gold at the head office. The whole money withdrawn was taken away in notes, and the consequence was, that on the afternoon of the 9th November, when the Bank stopped, there was a very large amount of notes in circulation, something about £720,000. *Mr. Wilson:* Then the depositors became uneasy about the security of their deposits, went to the Bank and took the Bank's notes?—Yes. *Mr. Wilson:* Did they pay them immediately into other banks?—Yes. *Mr. Wilson:* They thereby indirectly obtained payment through the other banks?—Precisely so; they transferred their deposits from one bank to the other. *Mr. Wilson*: Did any of the depositors demand gold?—Almost none; during the week, after the 10th October, there was a slight demand for gold, and in the country, I believe, there was a very slight demand for gold." Mr. Fleming then gave the figures, shewing that the total demand for gold during the whole month, from the 10th October to the 9th November, was only £44,000, of which more than £6,000 was in exchange for notes, but the total demand for deposits and balances

on account was £1,280,000; from which it follows, of course, that the total pressure on the Bank was this—

For gold in exchange for notes	£6,000
For deposits taken in gold	38,000
For deposits and balances taken in Bank's notes	1,236,000
	£1,280,000

Now, if the Bank had not issued notes, how would this last item have been demanded? *Of course, in gold.* So that it is quite clear that the power of the Bank to issue notes saved and lessened the demand for gold to that extent. And we have already shewn that it was not any run for gold that made the Bank stop, but its inability to provide for payment of the adverse balance of exchange. But it may be said—See what followed the next morning on some of the other banks. *But then there would have been the very same run if there had been no notes at all.* And that very run was greatly aggravated, if indeed it was not chiefly due to the most unfortunate decision of the other banks to refuse the Western Bank's notes. *As soon as the other banks agreed to take the Western's notes, the panic immediately subsided, even though a second bank stopped the same morning.* Now, what is the effect we might naturally have expected from a second bank's stopping in the midst of a panic? Clearly that the panic would have been greatly intensified. But in this case it was not so. The City Bank did not open on the Wednesday morning, and yet the whole panic was over by two o'clock that day. The whole demand on the Royal Bank for gold did not exceed £1,000

Now, without prejudicing the question in any way, whether the Scotch £1 notes should be suppressed, there is no dispassionate man who can, after reading the details of this crisis, come to the conclusion that they had anything whatever to do with this panic. The great wonder is, that after the unprecedented circumstance of two great banks stopping payment, the panic was so short, and so slight as it was. Does any man who knows London think that, if a similar case had happened there, the consequences would have been so comparatively trifling? The two London banks of most nearly equal magnitude with the Glasgow ones that stopped

are the Union and the London and County. Let us imagine that the Union Bank of London was to stop payment, and two days after the London and County. Does any man who knows London suppose that in such a case the panic would be limited to one day and a half. No man in his senses would think so

Nor can there, we think, be any reasonable doubt that the refusal of the Edinburgh banks to take the notes of the Western Bank was a most unfortunate one. When the Ayr Bank failed, all the other banks immediately gave notice that they would take its notes at par, because they knew very well that its proprietors were perfectly well able to discharge all the claims upon them. It was perfectly well known that the proprietors of the Western Bank were worth many millions of money, and that there was no possible danger of any ultimate loss. Yet the banks on this occasion decided to refuse their notes, which decision they were afterwards obliged to rescind. And this is a very good proof that it was wrong from the first; and immediately that the notes were taken the panic ceased

In the years of the great speculations in railways, numbers of persons wished to carry on the game of speculation by buying shares, and then raising money upon them from bankers. The old banks prudently declined this sort of business, and a number of banks were got up, principally for this business—if, indeed, it can be called business at all—as it was, in fact, pure gambling. After a short time, the railway shares went down as fast as they had risen, and all these bands, which were called Exchange Banks were ruined, some of them under the most disastrous circumstances

On the **Right** *of the Scotch Banks to open Branches in England*

17. We must now touch upon a point which has been much discussed lately

Within the last few years all the Scotch Banks have opened branches in London, and one has opened some in the north of England. It is perhaps somewhat surprising, in these days of free competition, that their doing so has created some opposition, and in fact their right to do so has even been questioned in Parliament. Of course in this place we do not discuss their reasons for so doing: that is a matter exclusively

for their own consideration. Our sole purpose is to state their legal right to act as they have done

As for the purposes of trade and commerce England and Scotland are one country, there is no apparent reason why they should not have this right. No one questions the right of English Banks to open branches in Scotland, if they choose: and in fact several of the English Colonial Banks have agencies in Scotland. Why then should it be supposed that it is contrary to law for the Scotch Banks to open branches in England?

Many of the leading Scotch Insurance offices have opened branches in London, and not a word of objection was ever heard from the English Insurance Offices. But because the Scotch Banks have found it necessary for their business to open branches in London, a great deal of ill-feeling has been displayed by the English Banks; and even their Right to do so has been denied

The *onus* of proof lies entirely on those who deny their Right to do so. It may be said at once that the whole question turns on the privileges of the Bank of England: and it is necessary to state exactly what these privileges are. The privileges of the Bank of England are a penal enactment against the rights of the rest of the trading community, and therefore they are to be construed strictly. Nothing is contrary except what is clearly and distinctly forbidden by them: everything else is legal and permissible

It has been seen that, at its first institution, the Bank of England received no monopoly. When the capital of the Bank was increased in 1697 it was first enacted that no other Bank should be sanctioned by Act of Parliament. In 1709 it was enacted that no company or society exceeding six persons might borrow, owe or take up any sum or sums of money on their Bills or Notes payable at demand, or at any less time than six months from the borrowing thereof, in that part of Great Britain called **England**

At that time no one had framed a definition of Banking. But it was supposed that issuing Notes payable on demand was so essentially what constituted the business of Banking, that to prevent persons from doing that was to prevent them from Banking

In 1742, to strengthen this monopoly more effectually, it was

enacted that "to prevent any doubts that may arise concerning the privilege or power given by former Acts of Parliament to the said Governor and Company of **Exclusive Banking**, and also in regard to the erecting any other Bank or Banks by Parliament, or restraining other persons from **Banking** during the continuance of the said privilege granted to the Governor and Company of the Bank of England, as before recited, it is hereby further enacted and declared, by the authority aforesaid, that it is the true intent and meaning of the Act that no other Bank shall be *erected, established, or allowed by Parliament*, and that it shall not be lawful for any body politic or corporate whatsoever, united, or to be united, in covenants or partnership exceeding the number of six persons, in that part of Great Britain called **England**, to borrow, owe, or take up any sum, or sums of money, on their Bills or Notes payable at demand, or at any less time than six months from the borrowing thereof, during the continuance of such said privilege of the said Governor and Company, who are merely declared to be and remain a Corporation with the privilege of **Exclusive Banking** as aforesaid"

These words which were always contained in subsequent Bank Charter Acts, strictly define the exclusive privelege of the Bank of England. Its sole monopoly is that no Bank having more than six (now ten) partners shall issue notes payable at less than six months in **England**: but all other kinds of banks and banking are left absolutely free

There is no doubt whatever that Parliament intended to confer an absolute monopoly of banking on the Bank of England: but by strictly defining what that they conceived banking to consist in, they in fact, ultimately defeated their own purpose. If the words had been general, and given a simple monopoly of Banking, no other bank of any other sort or description exceeding six persons, could have carried on business in England. But in order to make assurance doubly sure, they gave what they conceived to be a description of banking: and the legal effect of doing so is to confine the monopoly to that particular method of banking so described

After the great crisis of 1825 the Bank consented to give up a portion of their monopoly, and in 1826 Joint Stock Banks were

allowed to be formed to issue notes beyond the limit of 65 miles from London, provided that they had no head office and did no business in London

But as has been shown, the private bankers of London about 1793, discontinued issuing notes of their own accord: and they were thus the first to show that banking may be carried on without notes. About 1820 some persons began to allege that there was nothing in the monopoly of the Bank of England to prevent banks of any magnitude and number of persons being formed, provided that they did not issue notes payable on demand: and a declaratory clause to the effect was inserted in the Bank Charter Act of 1832. And it was under this declared common law right that the London Joint Stocks have been founded

Such is a simple statement of the law of the case. And with respect to the Scotch Banks opening branches in London, or any other part of England the sole question is—Do they issue notes payable at less than six months after demand in England? The clear answer is that they do not: and consequently they have an absolute right to open branches in London, or in any other part of England if they choose

The sore point of the case is this: the National Provincial Bank and the Capital and Counties Bank have found it expedient to establish their head offices in London and become London bankers: and probably in course of time other country banks will find it expedient to do the same. But to do this they must, by the Act of 1826, abandon their issues in the provinces. And they consider it a very great grievance that they have to give up their lucrative country issues, when they become London bankers, while the Scotch Banks may do business in London, and still maintain their issues in Scotland

The answer to all this is that it is a matter of pure and simple law. By opening branches in London the Scotch Banks do not infringe the monopoly of the Bank of England, so long as they do not issue notes payable at demand in England: whereas country banks issuing notes in the provinces directly contravene the Act of 1826, if they do business in London

It is moreover somewhat suprising that so much ill feeling has been created by the Scotch Banks opening branches in London, while a great Irish Bank, the National, has not only its head

office but a considerable number of branches in London, and all the while maintains an authorised circulation of notes in Ireland, greater than that of all the Scotch Banks together: and yet not a word of objection was ever made to it

As a matter of fact any bank in any part of the world has a legal right to open any number of branches in London or in any part of England, so long as it does not issue notes payable on demand in **England.** It would be perfectly competent to the Scotch Banks to remove their head offices to London, if they chose, as the National Bank of Ireland has done

Whatever may be the hardship or the injustice of the case, the remedy does not lie in depriving the Banks of their legal rights: but rather in the thorough revision and rectification of the banking laws of England, which the logic of facts will probably force, however unwillingly, on the Government before very long

18. At the end of 1878 the country was startled by the failure of the City of Glasgow Bank, which had suspended payment in 1857. The directors of the other Banks, having learnt wisdom from their experience of refusing the Notes of the Western Bank in 1857, unanimously received the Notes of the City Bank, and thus averted a severe panic. But the terror of the Shareholders of the other Banks was so great at finding themselves involved in such ruinous liabilities that they threw their shares on the market in vast quantities, and Bank Shares fell about 30 per cent.: and in the next session an Act was passed to enable all Joint Stock Banks to limit their liability. This Act will be fully considered in a subsequent chapter

19. The following table exhibits the position of the Scotch Banks in 1883—

Position of the Scotch Banks in 1883.

Bank.	Date.	No. of Branches.	Subscribed Capital.	Paid up.	Reserve.	Deposits.	Authorised Issue of Notes.	Notes Issued.	Drafts.	Acceptances.	Total Liabilities.	Average Coin held 1882–83.
			£	£	£	£	£	£	£	£	£	£
Bank of Scotland	1695	106	1,875,000	1,250,000	775,000	12,929,479	343,418	746,391	241,752	1,170,592	15,086,215	681,746
Royal	1727	125	2,000,000	2,000,000	762,000	12,463,288	216,451	795,650	253,824	344,039	13,856,801	712,903
British Linen	1746	103	1,000,000	1,000,000	750,000	10,082,350	438,024	606,995	139,351	178,626	11,007,322	328,572
Commercial	1810	113	5,000,000	1,000,000	545,000	9,903,731	374,880	831,181	207,647	96,793	11,039,354	551,140
National	1825	94	5,000,000	1,000,000	660,000	12,766,066	297,024	711,401	165,624	1,086,084	14,729,177	492,271
Union	1830	123	5,000,000	1,000,000	350,000	10,937,157	454,346	829,112	54,783	111,858	11,932,910	513,654
Town and County	1825	51	1,250,000	252,000	126,000	1,975,377	70,133	204,859	——	182	2,180,418	186,969
North of Scotland	1836	64	2,000,000	400,000	213,000	3,101,911	154,319	383,171	57,239	28,155	3,570,478	277,519
Clydesdale	1838	99	5,000,000	1,000,000	551,000	7,619,951	274,321	628,823	141,503	776.822	9,167,100	387,779
Caledonian	1838	23	750,000	150,000	52,000	871,225	53,434	105,507	6,009	4,134	986,876	61,759
		901		9,052,000	4,785,090	82,650,535	2,676,350	5,841,090	1,267,732	3,797,285	93,556,651	4,194,312

CHAPTER XIV

ON SOME THEORIES OF CURRENCY

1. It now becomes our essential and most important duty to investigate some Theories of Currency, which have acquired great celebrity, not only from their historical interest, as having led to some of the most extraordinary and heartrending public calamities on record, but because they are still extensively believed in at the present day. It is of essential importance not only to lay the true foundations of monetary science, but also to point out the fundamental fallacies upon which some specious but fatally delusive theories rest, which have brought the most disastrous consequences upon those nations which have adopted them, as will always be the case when the eternal laws of nature are systematically and perseveringly violated

2. The first of these theories we shall designate as **Lawism,** not because John Law was the original deviser of it, but because he was the first who wrote the most formal treatise on it, and he had the opportunity of carrying it out on the most extensive scale. His name, therefore, must always be most prominently associated with it; and it is one so specious, but so dangerous, and so widely prevalent at the present time, that it requires to be branded with a distinctive name, and to be combated with all the power of argument that can be brought against it

3. The question shortly stated is this. All persons, except those who advocate an inconvertible paper currency, agree that a paper currency must represent some article of value, and bullion has been generally chosen for that purpose. Now, the idea has occurred to a great many persons—If it is only necessary that a paper currency should represent some article of value, why should it not represent any or all articles of value, such as land,

corn, silk, or any other commodities, and, among others, the public funds? And this has actually been tried in several instances, yet they have universally failed, and in many cases have been attended with the most dreadful calamities. Now, as this has uniformly happened, and, as we shall shew further on, it must happen, it necessarily follows that there must be some radical error in the principle, and that it must violate some great law of nature. And this is beyond all comparison the most momentous problem in Economics—Why is it improper to issue a paper currency on any other basis than that of bullion? All the most eminent British statesmen have instinctively resisted such proposals, although repeatedly pressed to do so. No doubt it has been a most fortunate instinct for the country; but all their reasonings on the subject, if only pursued to their legitimate consequences, tend to that result. The Bank Act of 1844 was the first occasion on which a small bit of this theory was introduced, which, if only followed out to its legitimate conclusion, would produce in this country the horrors of the Mississippi scheme in France. But though the British Parliament, by a blind, unreasoning instinct, has always, with the exception just named, resisted such fatal advice, this will not satisfy the demands of science. Science imperatively demands a reason *why* such a plan is wrong; she will not be satisfied with a simple dogmatic assertion that it is wrong, even though that dogma may be right, but she must know the reason why; and, until a true, scientific reason is given why such plans are fatal, there will be a constant demand for them

4. It is, moreover, the thing which has brought the name of Law into such unhappy notoriety. Law has, in many respects, very great merit as a writer. In many respects he had clearer and sounder views on monetary science; he had infinitely more practical insight and scientific knowledge of what he was writing about than the most eminent of modern political economists. In his various writings is to be found the refutation of all the absurd follies of the Government and of the Bank of England in 1811. But all this was marred by a single defect. He was the great advocate of what is now the popular cry—basing a paper currency upon any article of value beside bullion. The only difference

between him and our greatest statesmen is that he carried out their arguments to their legitimate conclusion. He had the opportunity of carrying this theory into effect, and the result has been to obscure all his other merits, and brand him for ever as a charlatan. What, then, was his error?

5. Upon sifting his theory to discover his error, we shall obtain one of the most beautiful triumphs of pure reasoning to be found in any science. We shall find that the plausible scheme, which we shall designate by his name, is founded upon a direct contravention of the fundamental conception of the nature of a Currency which we have established in this work, and the proposition which directly flowed from it, viz., *that where there is no* **Debt,** *there can be no* **Currency.** We shall find that these awful monetary cataclysms which have shaken nations to their foundations, producing calamities more fell than famine, tempest, or the sword, have been brought about by attempting to carry into practice a philosophical fallacy which involves a contradiction in terms

6. It is impossible to say who first invented the theory we are going to notice; in fact, it must have sprung up indigenously among almost any people who began to form theories of Paper Currency. Several persons about the same time seem to have hit upon it. The earliest we know of was a certain Mr. Asgill, a Member of Parliament, who paid much attention to commercial questions. The most notorious precursors of Law were Dr. Hugh Chamberlain, who brought forward a rival scheme to the Bank of England in 1693, and Mr. Briscoe, one of the chief promoters of the Land Bank in 1696. Chamberlain's ideas will be noticed a little further on. He strongly accused Law of having stolen his ideas from him, which Law strenuously repudiates, and points out the distinction between them, and it must be allowed that Law's ideas were not so extravagant as Chamberlain's. Law first published his theory in a tract, called "Money and Trade Considered," at Edinburgh, in 1705. He was the son of a goldsmith, and of dissipated habits, but of an extremely acute intellect; and, up to a certain length, his views are sagacious and correct—much more so, indeed, than those of many writers of the present

day. He observed the extreme poverty and barbarousness of Scotland, which he thought might be cured by bringing an additional quantity of money into the country; and, as silver was scarce, he attempted to devise a scheme for providing a substitute for it

7. He begins by many very sound and acute remarks on the value of commodities, and the causes of their change of value. He describes the qualities which fitted silver to be used as money, above every other commodity. He attributes the very inconsiderable trade of Scotland to the small quantity of money she possessed. This is the first fundamental fallacy, because the fact was it was just the reverse; Scotland had little money *because* she had little trade. He, however, perceived the fallacy of lowering interest by law. He then goes on to consider the various means which have been employed to increase the quantity of money. He says that some countries have raised money in the denomination; some have debased it; some have prohibited its export under the severest penalties; some have obliged traders to bring home bullion in proportion to the goods they imported. But he says that all these measures have been futile and vain, and none of them have been found to increase or preserve money. He then says that the only effectual method hitherto discovered for the increase of money was the erection of Banks. He then describes various banks. Some made it a principle to issue no more notes than they had of actual bullion. He then mentions the Bank of England, and the superiority of its notes over those of the goldsmiths. He then describes the Bank of Scotland, and says that it issued notes to four or five times the value of the money in the Bank, which he very justly says were equivalent to so much additional money. He then points out the absurdity of supposing that raising the denomination of the money added to its value, that if the shilling was raised to 18*d.*, it paid debts by two-thirds of what was due, but did not add to the money; "for it is not the sound of the denomination, but the value of the silver is considered." The wonderful philosophers of 1811, no doubt, looked down with prodigious disdain upon Law, but they might have studied him with advantage. He then points out with much detail the fraud and inutility of tampering with the

currency. He describes the additional effect which credit may give to money; but says that credit which promises a payment of money cannot well be extended beyond a certain proportion it ought to have with the money. Nothing can be more judicious and sound than his remarks upon credit—that it must always vary in proportion to the metallic basis it is built upon; and up to this point his sagacity and penetration are in advance of the doctrines of a century later; but here is the boundary, after which he plunges into that fatal and delusive fallacy, which is the distinctive feature of what we denominate **Lawism**

8. Thinking that money was so scarce in Scotland that any credit that could be built upon it would be insignificant, he says—

"It remains to be considered, whether any other goods than silver can be made money with the same safety and convenience.

"From what has been said about the nature of money, it is evident that *any other goods which have the qualities necessary in money*, **may be made money equal to their value** with safety and convenience. There was nothing of humour or fancy in making silver to be money; it was made because it was thought best qualified for that use

"I shall endeavour to prove that another money may be established with all the qualities necessary in money in a greater degree than silver"

9. He then proceeds to shew at great length that silver had some peculiarities that disqualified it from being the best substance to form money of; that it varied in value; that it had increased much faster in quantity than the demand for it, and had, therefore, fallen much in value. In fact, he tries to prove that silver had varied in value more than any other kind of goods, within the last two hundred years; that goods would always maintain a uniformity of value, because they only increased in proportion to the demand; that land would always rise in value, because the quantity would always remain the same, but the demand would continually increase; but that silver would always fall in value, as the quantity increased faster than the demand

10. Law then proceeds to deny that he had taken his ideas from Chamberlain, of which the latter had accused him ; and it must in candour be admitted, that his ideas were many degrees less mad than those of Chamberlain. Law asserts that he had formed his schemes many years before he had seen any of Chamberlain's papers—"Land, indeed, is the value upon which he founds his proposals, and 'tis upon land that I found mine ; if for that reason I have encroached upon his proposal, the Bank of Scotland may be said to have done the same. There were banks in Europe long before the doctor's proposal, and books have been written on the subject before and since. The foundation I go upon has been known as long as money has been lent on land, and so long as an heritable bond has been equal to a quantity of land"

11. The difference between Chamberlain's theory and Law's was this. Chamberlain maintained that if land was mortgaged for 100 years, it was a good security for 100 times its annual value: so that, if a man had landed property worth £1,000 a year, and if he mortgaged it for 100 years to the State, the State might issue notes to him to the amount of £100,000, which were to be declared equal to value in silver, and made legal tender for their nominal value. Now, if this theory be true, there is no good reason why land should be pledged for only 100 years; why not for one million years? which would do the thing on a somewhat more magnificent scale. But what need of stopping there? Why not pledge it to all eternity? And then every inch of land might be covered with paper notes, and they might be piled high enough to reach the moon, where the deviser of this scheme would probably find his lost wits. Law properly points out that the fallacy of this theory was, that Chamberlain assumed that the value of £100 to be paid 100 years hence is still £100. He says—"No anticipation is equal to what already is ; a year's rent now is worth fifteen years' rent fifty years hence, because that money lent out at interest by that time will produce so much." But, says Lord Macaulay—"On this subject Chamberlain was proof to ridicule, to argument, even to arithmetical demonstration. He was reminded that the fee simple of land would not sell for more than twenty years'

purchase. To say, therefore, that a term of 100 years was worth five times as much as a term of twenty years, was to say that a term of 100 years was worth five times the fee simple; in other words, that a hundred was five times infinity. Those who reasoned thus were refuted by being told they were usurers; and it should seem that a large number of country gentlemen thought the refutation complete"

12. Law's theory was to calculate the value of the fee simple of the land at twenty years' purchase and to coin notes to the value of that amount, and advance them to the owner of the land. This plan, therefore, had a limit, however absurd it was. It was bounded, in the first instance, by the value of the land expressed in silver money, but Chamberlain's had positively no limit at all to carry it out to its full length; the advance might be made to infinity; consequently, in mathematical language, we should say that Chamberlain was *infinitely* more mad than Law

13. Law showed that notes issued upon Chamberlain's plan would immediately fall to a heavy discount; but yet he says that though £500 of these notes were only equal to £100 in silver, yet the nation would have the same advantage by that £500 in notes as if an addition of £100 had been made to the silver money

"*So far as these bills fell under the value of silver money, so far would exchange with other countries be raised.** And if goods did not keep their price, *i.e.*, if they did not sell for a greater quantity of these bills, equal to the difference betwixt them and silver, goods exported would be undervalued, and goods imported would be overvalued

"The landed man would have no advantage by this proposal, *unless he owed debt*, for though he received £50 of these bills for the same quantity of victuals, he was in use to receive £10 silver

* This is the first occasion that we are aware of on which the great principle, that a depreciation of the paper currency would produce a fall in the foreign exchanges, which was so ardently contested in 1811 and subsequent years, is asserted. And it has all the more merit, that it is a *prediction* and not an *observation*

money; yet that £50 would only be equal in value to £10 of silver, and purchase only the same quantity of home or foreign goods

"The landed man who had his rent paid him in money would be a great loser, for, by as much as these bills were under the value of silver, he would receive so much less than before

"The landed man who owed debt would pay his debt with a less value than was contracted for, but the creditor would lose what the debtor gained"

Oh that the philosophers of 1811 had only pondered over this extract from John Law

14. Law then shows that—

"Notwithstanding any Act of Parliament to force these bills, they would fall much under the value of silver; but allowing that they were at first equal to silver, it is next to impossible that two different species of money shall continue equal in value to one another

"Everything receives a value from its use, and the value is rated according to its quality, quautity, and demand. Though goods of different kinds are equal in value now, yet they will change their value from any unequal change in their quality, quantity, or demand

"And as he leaves it to the choice of the debtor to pay in silver money or bills, he confines the value of the bills to the value of silver money, but cannot confine the value of the silver money to the value of the bills, so that these bills must fall in value as silver money falls, and may fall lower, may rise above the value of these bills, but these bills cannot rise above the value of silver"

15. Law succeeds, with great skill and acumen, in exposing the wild insanity of Chamberlain's plan, and truly predicts the results which would follow from it, or at least some of them, for there are many important ones he has omitted. The exact consequences which he predicted were manifested in Ireland and England a century later; and the sentences we have quoted, if we did not know their origin, might have been supposed to have been written to rebuke the folly of the directors of the

Banks of Ireland and England, and the mercantile witnesses of 1804 and 1810. But having demolished Chamberlain, he comes to his own proposal, which he says is "to make money of land equal to its value, *and that money to be equal in value to silver money, and not liable to fall in value as silver money falls.*" He then says—"**Any goods that have the qualities necessary in money, may be made money equal to their value.** Five ounces of gold is equal in value to £20, and may be made money to that value; an acre of land, rented at two bolls of victual, the victual at £8, and land at twenty years' purchase, is equal to £20, and may be made money equal to that value, for it has all the qualities necessary in money"

16. In this sentence is concentrated the whole essence of that eternal delusion, so specious and plausible, and so fatal, which we designate as LAWISM. It is, indeed, nothing but the stupendous fallacy *that money represents commodities, and that paper currency may be based upon commodities.* This delusion is deeply prevalent in the public mind at the present day, and probably there are few persons, except those who have studied the true philosophical principles of Political Economy, whose views are not deeply tainted with this infection. No man who does not thoroughly understand the great fundamental doctrine established by Turgot and others, *that money does not represent commodities,* can ever have sound ideas on this subject. **Money does not represent commodities at all, but only DEBT, or services due, which have not yet received their equivalent in commodities.** Now, the views of Law are much more extensively prevalent than is generally supposed. All those who think that there is any necessary connection between the quantity of money in a country and the quantity of commodities in it are influenced by them. Take the case of a private individual. Is there any necessary relation between the quantity of money he retains and the quantity of commodities he purchases? The quantity of money he has is just the quantity of debt—of services due to him—which he has *not yet* parted with for something else. It is the quantity of power of purchasing commodities he has over and

above what he has already expended. And the quantity of money a nation possesses is simply the quantity of accumulated industry it possesses over and above all commodities, but they have no relation whatever to each other. Now, money does not represent commodities, but it represents that portion of a man's industry which is preserved for future use. Whatever a man earns is the fruit of his industry, money included; and none of these separate items *represents* anything else, though it may be *exchanged* for other things. Now, the value of money depends upon its relations to what it represents, namely debt, and not to commodities. If money or currency increases faster than debt or services due, it immediately causes a diminution of its value. If debt increases faster than money or currency, then the value of money is raised. The infallible consequence, therefore, of an increase of currency, without a corresponding increase of debt, is to change the existing proportion between debt and currency, and to cause a depreciation of the latter commensurate to the changed proportion. The necessary and inevitable consequence, then, of issuing vast quantities of paper currency on the assumed value of property, is simply to cause a total subversion of the foundation of all value and of all property, and to plunge every creditor into irretrievable ruin

17. In fact, a moment's consideration will shew that the theory of basing a paper currency on commodities involves this palpable contradiction in terms, **that one can buy commodities and also have the money as well.** When a man buys commodities with money, he gives either a portion of his own industry represented by that money, or a portion of some one else's industry who gave him the money. But it is quite clear *that he cannot buy the commodities and keep his money as well.* It is exactly the same with a nation. A nation cannot buy commodities and have the money it bought them with as well, which is the principle necessarily involved in issuing paper currency as the representative of commodities. But the money of the nation is the mode and form in which the accumulation of industry which has not yet been spent in commodities is preserved; and if a nation wants other commodities besides what it has got, it must pay for them either with money, or with the

goods it has already. The idea of basing paper currency upon commodities is just as wild and absurd as if England were to sell her cotton goods to America for coin, and then demand back her cotton goods. The only result of such an attempt carried out into practice must be the most tremendous convulsions, and destruction of credit and all monetary contracts

18. Law, as we have seen, immediately saw through it, and exposed the ridiculous absurdity of Chamberlain's proposal. His own was that the value of all the land in Scotland should be estimated at 20 years' purchase, and that a parliamentary commission should be appointed with power to issue an inconvertible paper currency to that amount. He says—"The paper money proposed will be equal in value to silver, for it will have a value in land pledged equal to the same sum of silver money that it is given out for. . . . This paper money will not fall in value, as silver money has fallen or may fall"

19. We must, therefore, be careful to be just to Law. He was no advocate of an unlimited inconvertible paper currency. Quite the reverse. But seeing that a convertible paper currency could only be based upon bullion to a certain limited extent, preserving its equality in value with bullion, his idea was to base a paper currency upon some other article of value. And he thought that it might preserve its equality in value to silver on an independent basis. His idea was, that it is only necessary to have it represent some article of value. But this attempt was contrary to the nature of things. His paper currency, though avowedly based upon things of value, had exactly the same practical effects as if it had been based upon silver. It became redundant, and swamped everything. And the reason is plain. It was a violation of that fundamental principle we have obtained—"*Where there is no debt there can be no currency.*" And the fresh quantities of currency issued on such a principle only represent the previously existing amount of debt, and then suffer a necessary diminution in value. The necessary and inevitable consequence, then, of issuing vast quantities of paper currency on the assumed value of property is simply to cause

a total subversion of the foundation of all value and of all property, and to plunge every creditor into irretrievable ruin

20. To give a full account of Law's banking career in France would far exceed our limits, and to give an imperfect one would be of no use. We must, therefore, content ourselves with referring those of our readers who want information on the subject to our *Dictionary of Political Economy*, Art. *Banking in France*, where a full account of Law's scheme is given. It may be sufficient to say that his career, like his writings, is divided into two distinct portions. His writings are on Banking and **Paper Credit,** and his scheme for **Paper Money,** which are quite distinct from each other. Nothing can be sounder, or more judicious than the first. He clearly saw that paper credit must be limited by specie—his scheme was to create a **Paper Money,** beyond the limits of Paper Credit based on specie, which he expected would maintain an equality of value with specie. Multitudes of people have thought the same, and multitudes of people believe in it to the present hour. In 1705 the Parliament of Scotland fortunately turned a deaf ear to Law's specious proposal of creating Paper Money based upon land. In 1855 the representatives of commerce in the same city which had rejected Law's plan 150 years before memorialised the Government, and "do most emphatically object to the plan of restricting the security (upon which the Paper currency is based) to the possession of gold alone," which is simply Lawism

Nothing could be more extraordinary than the restoration of prosperity caused by the foundation of Law's Bank in 1716. It is probably one of the most marvellous transitions from the depths of misery to the height of prosperity in so short a space of time in the annals of any nation. And, if Law had confined himself to that he would have been one of the greatest benefactors any nation ever had. It was only when after three years, he had attained the very pinnacle of success, that he determined to carry out his scheme of **Paper Money,** which was the famous Mississippi scheme

The next example of Lawism was the Ayr Bank. The proprietors of this Bank were enormously wealthy, and, because they were so, they thought that their known wealth would sustain the

credit of any amount of paper issues. But, alas! their experience too fully and fatally verified the sagacity of the directors of the Bank of Scotland, who, in 1727, in answer to proposals for enlarging their credit, said—"For the quota of credit in a banking company *must be proportionate to the stock of specie in the nation*, learned and understood by long experience, and not extended to a capital stock subscribed for, which cannot in the least help to support the company's credit, if the specie of the nation decay." This doctrine contains the refutation of many wild schemes, and the true plan of regulating a paper currency, is simply to discover how a certain proportion shall be maintained between specie and credit

21. The third great outburst of Lawism took place in the same country that witnessed his first exploits. In preparation for it, Law's "Money and Trade Considered" was translated into French in 1789, as if all the memory of the great catastrophe sixty-nine years before had perished. The National Assembly had confiscated the property of the Church, but, instead of yielding a revenue, it cost the nation £2,000,000 a year more than it produced and in a few years augmented the public debt by £7,000,000. The property seized was valued at £80,000,000. The expense of management required that it should be sold, but no purchasers could be found; for all persons in that terrible political earthquake wished to have their property in as portable a shape as possible, and few were willing to trust to a revolutionary title. In this dilemma, the municipalities agreed to purchase a considerable portion of it, in the first instance, and resell it in smaller portions to individuals. But, as there was not specie enough to complete the sale, they issued their promissory notes to the public creditor, to pass current until the time of payment came; but when they became due, the municipalities had no means of discharging them. To meet them the Assembly, in the spring of 1790, authorised the issue of £16,000,000 of assignats on the security of the land. In September, further issues to the amount of £32,000,000 were authorised. The additional issues were warmly opposed by Talleyrand and other leaders, who predicted their depreciation; but Mirabeau strongly supported them, denying the possibility of their depreciation, saying—

"It is vain to assimilate assignats secured on the solid basis of these domains, to an ordinary paper currency possessing a forced circulation. They represent real property, the most secure of all possessions the land on which we tread. Why is a metallic circulation solid? Because it is based upon subjects of real and durable value, as the land which is directly or indirectly the source of all wealth. Paper money, we are told, will become superabundant; it will drive the metallic out of circulation. Of what paper do you speak? If of a paper without a solid basis, undoubtedly; if of one based on the firm foundation of landed property, never. There may be a difference in the value of a circulation of different kinds; but that arises as frequently from the one which bears the higher value being run after, as from the one which stands the lower being shunned—from gold being in demand—not paper at a discount. There cannot be a greater error than the terror so generally prevalent as to the over-issue of assignats. It is thus alone you will pay your debts, pay your troops, advance the revolution. Re-absorbed progressively, in the purchase of the national domains, this paper money can never become redundant, any more than the humidity of the atmosphere can become excessive, which descends in rills, finds the river, and is at length lost in the mighty ocean"

22. Although these assignats bore 4 per cent. interest, they had become depreciated in June, 1790; by June, 1791, they had lost one-third of their value. In September, 1792, further issues were decreed. The two preceding Assemblies had authorised assignats to the amount of 2,700,000,000 francs, equal to £130,000,000, to be fabricated, of which only 200,000,000 francs remained unspent. On the 11th of April, 1793, the Convention decreed six years' imprisonment in chains to any one who bought or sold assignats for any sum in specie different to their nominal value, or made any difference between a money price and a paper price in payment of goods. Vain effort! In June the assignat had fallen to one-third of its value, and in August to one-sixth. The exchange with London fell exactly in a corresponding ratio with the depreciation of the assignat at home. In June, 1791, it fell to 23; in January, 1792, to 18; in March, 1793, to 14; in June, 1793, to 10; on the 2nd of August it was as low as $4\frac{1}{4}$; on

the 18th of October it had risen to 8; but after that it ceased to be quoted at all. Cambon, the Minister of Finance, proposed a further immediate issue of 800,000,000 of francs, equivalent to about £33,000,000, in addition to the quantity already issued. The public domains he calculated at £350,000,000. Hence upon the theory of Law and Mirabeau there was an ample margin, and the assignats should not have been depreciated below the value of silver; and, in fact, according to them, it was impossible they should. Wonderful commentary upon the wisdom of the philosophers, who maintain that if a paper currency only represents *value*, it cannot be depreciated!

23. We must refrain from detailing the terrible misery caused by the forcible issue of assignats, which were legal tender at their nominal amount, the destruction of debts, the famine from the scarcity of provisions, the laws of the maximum, the penalty of death enacted against all who should keep back their produce from the market. All specie disappeared from the country and from circulation; those who possessed any, not deeming it secure from revolutionary violence, exported it to London, Hamburg, Amsterdam, and Geneva. But many persons stoutly maintained in pamphlets, that it was not the paper which was depreciated but the specie which had risen

24. The intolerable misery caused by this state of things induced the Government which succeeded the Reign of Terror to make an attempt to withdraw a portion of the assignats from circulation by *demonetizing* them, that is, depriving them of their quality of money, and forcing their holders to receive payment in land for them. But when a man wanted to buy food to eat, what was the use of giving him land? The report that a portion of the assignats were going to be demonetized sent down their value still lower, and a decree against it was obliged to be passed to appease their holders. All sorts of plans were devised to withdraw them from circulation; lotteries, toutines, a land bank, where they were to be lodged and bear 3 per cent. interest. But the constant issue of them, required for the necessary payments of the State, rendered all such attempts useless

25. In January, 1796, the assignats in circulation amounted to forty-five milliards, or about £2,000,000,000, and the paper money had fallen to one thousandth part of its nominal value. The Government then determined to issue *territorial mandates*, at the rate of 30 assignats to one mandate, which were to be exchangeable directly for land, at the will of the holder, on demand. The certainty of obtaining land for them made them rise for a short time to 80 per cent. of their nominal value; but necessity compelled the Government to issue £100,000,000 of these mandates secured upon land, supposed to be of that value. This prodigious issue sent the mandates down to nearly the same discount as the assignats were, and, consequently, as one mandate was equal to 30 assignats, the latter had fallen to nearly the thirty-thousandth part of their nominal value. At length on the 16th of July, 1796, the whole system was demolished at a blow. A decree was published that every one might transact business in the money he chose, and that the mandates should only be taken at their current value, which should be published every day at the Treasury. Two days afterwards it was decreed that the national property remaining undisposed of should be sold for mandates at their current value. As a matter of course the public creditors received payment of their debts in the same proportion

26. No sooner, however, was this great blow struck at the paper currency, of making it pass at its current value, than specie immediately reappeared in circulation. Immense hoards came forth from their hiding places; goods and commodities of all sorts being very cheap from the anxiety of their owners to possess money, caused immense sums to be imported from foreign countries. The exchanges immediately turned in favour of France, and in a short time a metallic currency was permanently restored. And during all the terrific wars of Napoleon the metallic standard was always maintained at its full value

27. One thing, however, we cannot help noticing. When describing the history and effects of the assignats, nothing can

be more clear and correct than the narrative of Sir Archibald Alison. He sees clearly that a difference in value between the assignat and specie was truly a discount, or fall in the value of paper. Thus he says:*

"They for some time maintained their value on a par with the metallic currency. By degrees, however, the increasing issue of paper currency produced its usual effect on public credit; the value of money fell, while that of every other article rose in a high proportion, and at length the excessive inundation of fictitious currency caused a universal panic, and its value rapidly sank to a merely nominal ratio. Even in June, 1790, the depreciation had become so considerable as to excite serious panic"

Again, speaking of 1791, p. 305—

"Public and private credit had alike perished amidst the general convulsions. Specie had disappeared from circulation. The assignat had *fallen* to a third of its value—[This is not quite correct; at this time the assignat had lost one-third of its value, not fallen to one-third of it]—and occasioned such an amount of ruin to private fortunes that numbers already wished for a return to the ancient *régime*

"While the unlimited issues of assignats, at whatever *rate of discount* they might pass, amply provided for all the present and probable wants of the Treasury, the vast and increasing expenditure of the Republic could only, amidst the total failure of the taxes, be supplied by the issue of assignats; and this, of course, by rendering paper money redundant, lowered its value in exchange with other commodities, and occasioned a constant and even frightful rise of prices

"All the persons employed by Government, both in the civil and military departments, were paid in the paper currency at par; but as it rapidly fell, from the enormous quantity in circulation, to a tenth part, and soon a twentieth of its real value, the pay received was merely nominal, and those in receipt of the largest apparent incomes were in want of the common necessaries of life. Pichegru, at the head of the army of the North, with a

* *History of Europe, Vol. II., p. 219, 7th Edit.*

nominal pay of 4,000 francs a month, was in the actual receipt, on the Rhine in 1795, of only 200 francs, or £8 sterling of gold and silver

"The funds on which the enormous paper circulation was based embracing all the confiscated property in the kingdom in land, houses, and moveables, were estimated at fifteen milliards of francs, above £600,000,000 sterling; but, in the distracted state of the country few purchasers could be found for such immense national domains; and, therefore, the security for all practical purposes was merely nominal. The consequence was that the assignat fell to one-twelfth of its real value; in other words, an assignat for 24 francs was worth only 2 francs; that is, a note for a pound was worth only 1*s.* 8*d.*

"Foreign commerce having begun to revive with the cessation of the Reign of Terror, sales being no longer forced, the *assignat was brought into comparison with the currency of other countries,* and its enormous inferiority precipitated still further its fall

"By no possible measure of finance could paper money, worth nothing in foreign states, from a distrust of its security, *and redundant at home from excessive issue,* be maintained at anything like an equality with gold and silver. The mandates were, in truth, a reduction of assignats to a thirtieth part of their value; but, to be on a par with the precious metals, they should have been issued at one-thousandth part, being the rate of discount to which the original paper had now fallen

"The excessive fall of the paper at length made all classes perceive that it was in vain to pursue the chimera of upholding its value. On the 16th July, 1796, the measures, amounting to an open confession of a bankruptcy which had long existed, were adopted"

28. We have quoted these passages for the purpose of shewing how completely Sir Archibald Alison, when he is speaking of the paper currency in France, acknowledges the great principle that the value of the paper currency is only to be estimated at the value it will purchase in specie, that the measure of that difference between the real and the nominal value is its

depreciation, and that a payment in coin at the current value of the paper currency is a **National Bankruptcy.** Yet, such is the amazing inconsistency of this writer, that when he comes to speak of the paper currency of England, which exhibited exactly the same phenomena, only on a smaller scale, he resolutely denies that it was depreciated. When the French assignat had lost one-third of its value compared to specie, in 1791, he acknowledges that it was *depreciated;* when the Bank of England note in 1811 had lost one-fourth of its value compared to specie, it was not the note which had fallen, but gold which had risen!! When assignats were made legal tender in France at their nominal value, specie disappeared from circulation. Sir Archibald Alison estimates the depreciation of the assignat by the difference between the current and the nominal value of the assignat; but when the Bullion Committee estimated the depreciation of the Bank note by the difference between its nominal and its current or market value, he reads a homily to them upon their ignorance and folly, talks of the "general delusion which so long had prevailed upon the subject, when it is recollected not only that the true principles of this apparently difficult, but really simple branch of national economy, which are now generally admitted were at the time most ably expounded by many men both in and out of Parliament, but that, in the examination of some of the leading merchants of London before the Parliamentary Committee on the subject, the truth was told with a force and precision which it now appears surprising any one could resist." This truth, which was told with such irresistible force and precision, was that twenty-seven was equal to twenty-one! He then acknowledges that it was a national bankruptcy of the French Government to pay its notes with a less amount of specie than their nominal value; but nothing can exceed the bitterness of his invective against the Currency Act of 1819, which provided that the Bank of England should pay its notes at their full nominal value in specie. Just as if it was less a *bankruptcy* to pay 15*s.* in the pound than to pay 1*s.* in the pound. He sees clearly that in *France* the paper currency is to be estimated by the value of gold; but in *England* he maintains that gold is to be estimated by the value of the paper currency!! Just as if the eternal truths of science are different on different sides of the

Channel, or that they are reversed according to the language they are expressed in!

29. Sir Archibald Alison's doctrines, when he speaks of English and the French inconvertible paper currency, are clearly inconsistent. He fully allows that any difference between the nominal and the current value of the assignat was a *depreciation* of the assignat. He never dreams of saying that the paper assignat was the standard, and that the *coin* had risen in value. But when he discusses the question of—What is a pound? he says—"In truth, a pound is an abstract measure of value just as a foot or a yard of length, and different things have at different periods been taken to denote that measure, according as the conveniency of men suggested. It was originally a pound weight of silver, and that metal was, till the present century, the standard in England, as it still is in most other countries. When gold was made the standard, by the Bank being compelled by the Act of 1819 to pay in that metal, the old word denoting its original signification of the less valuable metal was still retained. During the war, when the metallic currency disappeared, the pound was a Bank of England pound note—the standard was the paper—for gold was worth 28*s.* the pound, from the demand for it on the Continent." It is scarcely necessary to point out the ridiculous absurdity of this passage. The pound an *abstract* thing indeed! Our ancestors had very few abstract ideas at all, and certainly an *abstract* idea of a pound was not one of them. They meant nothing abstract, but, on the contrary, a very substantial *pound weight of silver bullion,* and nothing else. To say that a paper pound was the standard during the war is a misconception of the fact. Instead of a "promise to pay" on demand, the Bank note during the war was a "promise to pay specie six months after peace." It is not true that gold during the war was worth 28*s.* paid in *silver money*, but only in depreciated *Bank notes.* But Sir Archibald Alison admits that an excessive issue of paper would have depreciated the Bank note, but he of course denies that the issues were excessive. Now, as a depreciation from an excessive issue could only be manifested by a continuous rise of gold above 28*s.* the pound, it would be difficult to understand where the turning point would

be at which the depreciation would commence. At what figure should we have to reverse our expression—at what figure are we to say that gold has ceased to rise and paper begun to fall?

30. Such is a plain statement, founded upon incontrovertible facts, of the results of the greatest experiment the world ever saw of issuing a paper currency secured upon commodities or property—the most complete example of **Lawism.** When the issues of assignats were at their height, they were certainly not anything equal to the value of the fee-simple of France expressed in silver money. And, according to the predictions of Law and Mirabeau, it was a matter of impossibility that they should ever become depreciated, and what was the result? Even though the experiment was not carried out to its fullest extent, the value of the paper assignat sank to one 30,000th part of its value in silver! There were 2,400 millions of promises of mandates issued against property valued at 3,785 millions, and yet, in July, 1796, the note for 100 livres was only 5 centimes! Such was the inevitable consequence of basing a paper currency upon property or securities, and such it must ever be, because, if such issues are once begun, there is no legitimate conclusion whatever, until all the property in the country is coined into notes. Pass the legitimate limits of a circulating medium by one hair's breadth, and there is no logical conclusion but in the French assignats

31. The next example we shall cite is the Bank of Norway, which was founded on the 14th June, 1816, with its head office at Drontheim and branches in the provincial towns.* Its capital was originally raised by a forced loan or tax upon all landed property, and the landholders became shareholders according to the amounts of their respective payments. This Bank was especially for the purpose of forwarding agricultural improvements, and only discounted mercantile bills and personal securities, as a secondary part of its business. Its principal business consisted in advancing its own notes upon first securities over land, to any amount not exceeding two-thirds of the value

* *Laing's Norway, p.* 184. *Travellers' Library.*

of the property according to a general valuation taken in the year 1812. The borrower paid half-yearly to the Bank the interest of the sum that may be at his debit, at the rate of 4 per cent. per annum, and is bound also to pay off 5 per cent. yearly of the principal, which is thus liquidated in twenty years. Mr. Laing bestows great commendation upon this institution, and describes it as well-imagined and well-managed, and there cannot be a better example to test the truth of Law's principle. We must bear in mind that Law expressly declares that on his principle *his paper currency would not fall below the value of silver*. Now, let us mark what took place with regard to the Bank of Norway, which was founded purely on his principles. By the fundamental law of this Bank it should, after a certain time, have begun to pay its notes in specie, but in 1822 they could only be exchanged at Hamburg for silver at the rate of 187½ dollars in paper for 100 dollars in silver!! That is, in six years the notes had fallen to about 45 per cent. discount! Was there ever a more striking or conclusive example of the entire fallacy of Law's predictions than this Bank? In 1822 the Storthing passed a law that the Bank should only be compelled to give 100 silver dollars for every 190 paper dollars, but that the directors might at their own discretion reduce the rate to 175, without a new law. In 1824 the value at Hamburg rose to 145, in 1827 it rose to 125, and in 1835, when Mr. Laing wrote, it stood at 112, which could only have been done by a contraction of its issues. Now, it is quite evident that if the Bank had been called upon to pay its notes at par at any moment, it would infallibly have been ruined. This happened in Paris in 1803, when the Land Bank stopped payment, and J. B. Say observes that all banks founded upon this principle have uniformly failed

32. The last example we shall cite is the case of America. That country was unhappily deeply bitten with the currency mania of basing issues of paper on "securities." In most of the States the Legislature passed Acts permitting any individual or any banking associations to issue notes to any amount, upon depositing with a "public comptroller" securities of equivalent value. These "securities" might be public stock, or mortgages

upon improved, productive, and unencumbered lands.* Now, as these "securities" remained the property of the vendors, and they might appropriate the revenues from them as long as payment of the notes was not demanded from the comptroller, people saw that they might derive a profit from the security as well as from the currency which represented its value. There was, accordingly, a prodigious rush to deposit securities—an enormous issue of paper, during the years 1834-35-36. The prices of everything rose immensely. The people of the Western States, with their "pockets full of paper currency, gave very large orders for goods to the merchants of New York, Boston, and Philadelphia, who duly executed them. The bills given for the purchases were payable in these eastern cities; and, when the western debtors went to their own bankers for bills of exchange on these places, in return for their own local currency, the bankers discovered that their home customers had bought more from the eastern cities than they had sold; that they had already drawn on the east for every dollar which the east was indebted to them, and could draw no more. The western merchants then sent their own currency notes to the eastern cities in payment, but, unfortunately for them, the merchants there had already paid all they owed to the west, and nobody in New York or Philadelphia wanted western notes for any purpose of use, and nobody was disposed to travel 600 or 700 miles to request the cashiers of the Western States to pay their notes, or in those States in which security had been given, to require the comptroller to sell the pledged securities and pay them the money produce. Moreover, every one knew that it was physically impossible in either case to obtain the amount in money, for there was no currency in which the pledged property when sold could have been paid, except *Bank* notes resting on securities, or on the mere promise of the banker." In the meantime the usual effects followed, specie disappeared from circulation. The extended paper issues led the Americans to order immense quantities of goods from Europe, and, prices being very high from the bloated paper currency, they could send no goods in return to pay for them. For some

* A very graphic account of the currency vagaries of the United States is given in two articles of the *Scotsman*, Nov. 21 and 24, 1855. See also *The Progress of America*, by John Macgregor, Esq., M.P., vol. 2, p. 1768.

time they sent over great quantities of their stock, but this became superabundant, and at last no one in Europe would buy it. It became necessary then for them to pay their debts in specie; but specie there was none. In 1837 all the banks in America, without exception, stopped payment. The general suspension began at New York on the 11th May, and spread in every direction. In May, 1838, the New York banks resumed specie payments, which were followed by all the New England banks in August, 1838. This was followed by the banks in Philadelphia, and on the 1st January, 1839, the banks throughout the Union professed to do so. No sooner, however, were they set up again than they resumed the same wild operations on credit, and on 9th October, 1839, out of 850 banks in the Union 343 suspended payment entirely and 62 partially. On this occasion the New England banks were honourably distinguished; they had gathered wisdom; and out of 198 banks in New York only four stopped; whereas, in the Southern and Western States about two out of three stopped. The United States Bank, with a paid up capital of £7,000,000, was found to be utterly insolvent; its shares, which were at 123 dollars on the 14th August, 1838, were at 3 dollars in January, 1842. This was the fifth grand experiment of Lawism, pure and unadulterated, on the most magnificent scale, and such was the result!

33. All ideas, therefore, of basing a paper currency upon property, or commodities, are essentially erroneous, and can have no other possible termination, if only carried out to their legitimate consequences, than what happened in France in 1796 and America in 1837-39. There is one species of property, however, which, from its being more nearly confounded with money in the public ideas than any other, is supposed by many persons, who would repudiate any imputation of being disciples of Law, to be a sound basis for a paper currency. This property is public stock. A very prevalent idea is, that all banks of issue should give security by purchasing the public funds, and then deposit the stock with a Government officer. But what is this but the wildest, rankest, and most odious **Lawism**? The rule that is good for one is good for all. If the public funds are a proper basis for £1,000 of paper currency, they must of necessity be a

good basis to their whole extent. If one bank or banker is allowed to issue paper on the security of stock, every other one must be permitted to do the same, until the whole funded debt of Great Britain is coined into paper notes. If £100 of public debt is coined into £100 of notes, we must, by an irresistible conclusion, have £800,000,000 of public debt coined into an equal quantity of notes. The principles of basing a paper currency upon land, and upon the public funds, are absolutely identical and equally vicious. To permit a man to *spend* his money in buying part of the public debt, and to *have* it as well, in the form of notes, is as rank an absurdity as to permit him to spend it in land, and also have it as notes. The only advantage one has over the other is, that the funds are more easily convertible into money than land is. The same is true of a nation as an individual—that a nation can *spend* its money in destroying its enemies and *have* it too as bank notes, or "currency," is a wild and mischievous delusion

34. The drift of these remarks is evident. The whole constitution of the Bank of England is fundamentally vicious. It is as complete an example of pure Lawism as the French assignats or the American banks. It gave its original capital to Government, and then was allowed to have it in the form of notes. The first public debt was Bank of England stock, and for several of the early additions to its capital, *i.e.*, the public debt, it was allowed to issue notes to the exact amount of its capital, and this permission still continues. Now, if this system had been carried out to its legitimate conclusion, the National Debt and the capital of the Bank of England would have been the same thing, and the paper notes of the Bank would have been nearly £800,000,000. When it was founded the nation thought they might spend £1,200,000 in destroying the French, and have them too as Bank notes. But, if this principle had been carried out much further, it would have ended in fatal and universal ruin

35. The fundamental principle of the Bank of England was, therefore, as erroneous as that of the Mississippi scheme, the Ayr Bank, the French assignats, or American banking; but as, in all

these cases, the mischief is not developed until the issues exceed a certain limit, the radical vice of the Bank of England has been prevented from producing its inevitable consequences by rigidly restraining it to that single instance. But then this vice was kept down by a most unjustifiable monopoly, which was the chief cause of those tremendous banking catastrophes which have desolated England, and which has, until of late years, prevented a sound banking system being founded

On the Theory of basing a Paper Currency on the Discount of Commercial Bills

36. We trust that the preceding remarks are absolutely conclusive as to the fundamental fallacy of Lawism of all forms and descriptions, by which we mean the theory of basing issues of paper on property or commodities, whether the public funds, or land, or any moveable goods. We must now examine a much more subtle and plausible theory, which was the guiding principle of the Bank of Ireland and the Bank of England during the restriction, and which was adhered to by a large majority of the commercial world; nor are we aware of any refutation of it on philosophical grounds, except the one in the Bullion Report, which we shall quote and comment upon. This theory was first prominently brought forward before the Committee on the Irish Currency in 1804, and we have quoted it elsewhere. The Bullion Committee express it in the following words—

"The Bank directors, as well as some of the merchants who have been examined, shewed a great anxiety to state to your Committee a doctrine, of the truth of which they professed themselves to be most thoroughly convinced—that there can be no possible excess in the issue of Bank of England paper, so long as the advances in which it is issued are made upon the principles which at present guide the conduct of the directors; that is, so long as the discounts of mercantile bills are confined to paper of undoubted solidity, arising out of real commercial transactions, and payable at short and fixed periods"

37. The germ of this doctrine is to be found in Adam Smith, who says—"When a bank discounts to a merchant a real

bill of exchange, drawn by a real creditor upon a real debtor, and which, as soon as it becomes due, is really paid by that debtor, it only advances to him a part of the value, which he would otherwise be obliged to keep by him unemployed, and in ready money for answering occasional demands." It was first prominently brought forward as a practical rule by the Irish Bank directors in 1804. The Committee of that year did not attempt to deal with this theory; but the witnesses examined before the Bullion Committee reproduced it, and alleged that it was the principle by which the Bank of England regulated its issues during the restriction. The directors of the Bank allowed that before the restriction they were compelled to regulate their issues by a drain of gold on them for exportation; when that check was removed, the controlling power was lost; and, indeed, one of the directors stated that, in his opinion, that was one great merit of the restriction, that they were no longer obliged to adhere to their former rules. The Bullion Committee, however, decidedly condemn these opinions. They say, speaking of the consequences of the Restriction Act—

"By far the most important of these consequences is, that while the convertibility into specie no longer exists, as a check to an over-issue of paper, the Bank directors have not perceived that the removal of that check rendered it impossible that such an excess might be issued by the discount of *perfectly good bills*. So far from perceiving this, your Committee have shewn that they maintain the contrary doctrine with the utmost confidence; however it may be qualified occasionally by some of their expressions. That this doctrine is a very fallacious one, your Committee cannot entertain a doubt. The fallacy upon which it is founded lies in not distinguishing between an advance of capital to merchants and an additional supply of currency to the general mass of circulating medium. If the advance of capital only is considered as made to those who are ready to employ it in judicious and productive undertakings, it is evident that there need be no other limit to the total amount of advances than what the means of the lender and his prudence in the selection of borrowers may impose. But, in the present situation of the Bank, entrusted, as it is, with the function of supplying the public with that paper currency which forms the basis of our

circulation, and, at the same time, not subjected to the liability of converting the paper into specie, every advance which it makes of capital to the merchant in the shape of discount becomes an addition also to the mass of circulating medium. In the first instance, when the advance is made by notes paid in discount of a bill, it is undoubtedly so much capital, so much power of making purchases, placed in the hands of a merchant who receives the notes; and, if these hands are safe, the operation is so far, and in this, its first step, useful and productive to the public. But as soon as the portion of circulating medium in which the advance was thus made performs in the hands of him to whom it was advanced this, its first operation as capital—as soon as the notes are exchanged by him for some other article which is capital, they fall into the channel of circulation, as so much circulating medium, and form an addition to the mass of currency. The necessary effect of every such addition to the mass is to diminish the relative value of any given portion of that mass in exchange for commodities. If the addition were made by notes convertible into specie, this diminution of the relative value of any given portion of the whole mass would speedily bring back upon the bank which issued the notes as much as was excessive. But if by law they are not so convertible, of course this excess will not be brought back, but will remain in the channel of circulation until paid in again to the bank itself, in discharge of the bills which were originally discounted. During the whole time they remain out, they perform all the functions of circulating medium, and before they come to be paid in discharge of those bills, they have already been followed by a new issue of notes, in a similar operation of discounting. Each successive advance repeats the same process. If the whole sum of discounts continues outstanding at a given amount, there will remain permanently out in circulation a corresponding amount of paper; and if the amount of discounts is progressively increasing, the amount of paper which remains out in circulation over and above what is wanted for the occasions of the public will progressively increase also; and the money prices of commodities will progressively rise. This progress may be as indefinite as the range of speculation and adventure in a great commercial country"

38. Such is the reasoning of the Bullion Report, to shew the fallacy of the rule of the directors. We are not aware of any other attempt to refute it so elaborate as the one given. The conclusions are perfectly just, but the expressions are in some respects ambiguous, in some inaccurate; and, altogether, the reasoning is inadequate to effect its purpose of demonstrating the fallacy of the doctrine. In the first place, the expression "good bills" is one which we shall shew is full of fallacy. The Report has further been clouded by the false distinction between "capital" and "circulating medium." Again, it says the necessary effect of every addition to the mass of the currency is to diminish the value of the whole, which assertion is entirely erroneous, because the value of the currency is always proportionate to the work which it has to do; and it is only a change in the proportion between the currency and the work that it has to do that causes a change in its value. The Committee were further in great error in supposing that so small an amount as could be added to the circulating medium in so short a time as during the currency of the bills that were discounted could have any general effect on prices

39. We shall find that, by starting from our fundamental definition of currency, as transferable debt, and that the value of the currency depends upon the quantity of transferable debt which it represents, the fallacy of this theory can be demonstrated with great ease and simplicity, and the mischievous consequences which followed from it explained. When the merchant A comes to the bank to *discount* the acceptance of B, it is a sale of the debt to the bank. The bank buys a debt payable at a fixed time after date, with its notes, which are so many small debts payable to bearer on demand, while the notes are convertible. The transaction is simply an exchange of debts. At the appointed time it is B.'s duty to take a quantity of currency to the bank, and discharge his debt. He does this either in coin or in the bank's own notes. If he pays his own debt by the bank's notes, it is simply a re-exchange of debts between him and the bank; he extinguishes his own debt to the bank at the same time an equal quantity of the bank's debt is taken out of circulation and extinguished; consequently, the proportion existing previously

between the currency and the quantity of debt it represents remains unaltered. If the merchant discharges his debt partly in coin and partly in bank notes, or wholly in coin, the same result follows; the notes which remain out in circulation still represent the same amount of capital. But let us suppose that the acceptor *fails* to meet his engagement, and cannot pay his debt. Then the debt due *to* the bank is lost and extinguished; but the debt *against* the bank remains; and the bank, whilst the notes are payable to bearer on demand, must pay this debt out of its remaining capital. Still, however, though this is loss of capital to the bank, as the notes are taken out of circulation, the value of the notes remaining in circulation will not be affected. But now let us suppose the notes to be *inconvertible*, then, as before, if the acceptor pays the debt, the notes will be taken out of circulation, and extinguished simultaneously with the debt which they purchased, and the value of those remaining in circulation will not be altered. But suppose that the acceptor fails, and cannot pay his debt, then that debt is extinguished, but the notes which purchased it remain in circulation, and are a mere addition to the circulating medium already existing, without any corresponding addition to the debt or capital which it represents. It would have exactly the same practical effects as if for every good bill of £1,000 the bank were to issue an excess of currency, say £1,500 for example, and when the bill was paid only £1,000 would be taken out of circulation, and the remainder, £500, would remain in circulation. This residuum, as we may call it, would go in diminution of the value of the remainder, exactly in the same way as a constant increase to the gold currency would gradually cause a diminution in its value. Every such operation, therefore, alters the proportion between the currency and the capital, or the debt it represents; and though, no doubt, a few unsuccessful operations of this sort would not have any sensible effect in changing its value, yet a repeated succession of them must necessarily do so ultimately, just as adding a drop to water in a bucket may not perceptibly increase the height of the water, yet a continued series of drops will at length cause the water to overflow the bucket; so a continued series of such operations under an inconvertible paper currency must necessarily result in a serious diminution in the value of the whole

40. But it may happen that even though the merchant pays his debt, and no loss of capital ensues to the bank, yet it may be a loss of capital to him. Thus, when he bought the goods on credit, and gave his acceptance for them, which was purchased by the bank, he meant to employ these goods as *capital*, that is he bought them merely for the purpose of selling them again, with a profit. If he succeeds in this object, and sells them to advantage, he pays his acceptance out of the proceeds realised by the goods, and his capital is increased more or less, according to the greater or less advantage he sells them at. But if he has made a miscalculation, and sells the goods at a loss, he must still make good his debt to the bank out of his remaining capital: and such a transaction is a loss of capital to him. But every loss of capital to an individual is a loss of capital to the whole community.* And the great general result to the community is absolutely the same, whether the loss of capital falls upon the individual or upon the bank. The capital of the nation is diminished, but the currency remains the same. Consequently, every unsuccessful operation in trade alters the proportion between the quantity of the currency and the quantity of the debt, or the capital it represents; and, therefore, every unsuccessful operation necessarily tends to diminish the value of the whole currency, unless some means can be devised by which a quantity of currency can be removed from circulation corresponding to the loss of capital. Now, the diminution in the value of the currency inevitably shews itself in process of time, by a general rise in prices. It may do so gradually and imperceptibly at first—in the hourly variations of prices, it may not, perhaps, be perceived at first; just as when the waves are breaking upon the shore, it is impossible to tell whether the great tide is advancing or receding; but if it continues for any length of time, all traders begin to feel it instinctively. It is impossible, perhaps, to point out the precise influence in any particular transaction; but yet it makes itself felt in commercial operations by a general rise in prices. The fact is, that when the operation was done, and the product

* J. B. Say has also remarked this—"Un mauvais speculateur est aussi fatal à la prosperité général qu'un dissipateur."—*Traité d'Economie Politique, p.* 445. *Edit. Guillaumin*

exposed for sale, it was expected and calculated that a certain portion of currency would be appropriated to its purchase. But, if people do not want the article, they will not appropriate that portion of currency to its purchase; the producer loses his capital, and the currency remains in circulation. And the increased quantity of it gradually enters into the prices of other commodities, aggravating them, and swelling them up. Now, when this is the case, when the currency is made of a material which has a universally acknowledged value, nature herself provides a remedy. When commodities rise in price in this country beyond their prices in foreign countries, besides the cost of transporting them here, they will be imported, and the extra quantity thrown upon the market diminishes their price, both by altering the ratio of supply and demand, as well as by removing the quantity of currency necessary to pay for them from circulation, until the general equilibrium is again restored between prices, currency, and capital. But, if the currency be made of a material which has no value whatever, like paper, this great restoring process of nature cannot take place. The quantity of currency remains the same, while the debt it represents is diminished. The consequence is a general diminution in value of the whole currency—all the portion of the currency which has value as a material is driven out of circulation: then follows a great rise in the market price of bullion, and, as a necessary consequence, a fall in the foreign exchanges

41. The foregoing considerations enable us to affix a definite and specific meaning to a phrase which is now in constant use, but which we have never yet seen any attempt to explain. All discussions upon currency are full of misty and vague expressions about "excessive issues," "over-issues," but we have never seen any attempt to define what an "over-issue" is. Now, "over-issues" in general, must consist of specific instances of "over-issues" in particular cases. Where is the use or the sense of casting vague and indefinite accusations against the Bank of making "excessive issues," unless the person who makes the charge is prepared to point out specifically which issues are excessive, and which are not? Now, the meaning which we affix to an "excessive issue" or an "over-issue," is an advance upon

an unsuccessful operation, or the "purchase of a bad debt." Every quantity of currency advanced to promote an unsuccessful operation, or which purchases a bad debt, alters the proportion between the currency and the debt, or the capital it represents. Each specific instance, then, of such an operation, is an "over-issue," and the expression "over-issue," or "excessive issue," has no other meaning

42. The foregoing considerations also shew the complete fallacy of the theory we have been discussing, of issuing notes upon "good bills." In a banker's sense, a "good bill" means simply a bill which is duly paid by the proper party at maturity. It is not the smallest consequence to him, whether the transaction out of which the bill originated is a profit or loss to the person who incurred the obligation, as long as he is paid. But if the expression "good bill" be taken in a more extended and philosophical sense, to denote a bill upon which it is safe to issue currency, it is a very different matter indeed, for then a "good bill" can only mean one generated by a successful operation

43. It is not a little remarkable that Adam Smith adopts both the theories of paper currency, which have imposed so extensively on the banking and mercantile world, and that within a very few pages of each other. The one theory, that which the Bank Directors and merchants adopted in 1810 ; the other, which is the great currency fallacy of the present day. The two theories are utterly irreconcilable and inconsistent with each other ; the one necessarily leads to the most excessive over-issues and depreciation of the paper currency ; the other, if carried out in all integrity, would be utterly destructive of the business of banking

44. What, then, is the only true foundation of a paper currency ? Every consideration of sound reasoning and science, proves that the only true foundation of a paper currency is that substance which is the legal or universally accepted representative of **Debt,** *i.e.*, of services due, whatever that substance be. Now, among all civilised nations, gold or silver bullion is the

acknowledged representative of debt. Consequently, gold or silver bullion is the only true basis of a paper currency. Among all civilised nations the *weight of bullion is the acknowledged measure of value*, and, consequently, bullion is the only true basis of the "promises to pay." Many unthinking persons declaim against the absurdity of founding a paper currency upon the *commodity* of gold bullion rather than any other commodity, such as wheat, or silk, or sugar. But it is not as a *commodity* that bullion is the basis of a paper currency, but as the substance which is the accepted representative of *debt*. It would be perfectly possible to make a yard of broadcloth, or a Dutch cheese, the symbol of debt, and the measure of value; then broadcloth or Dutch cheeses would be the only true basis of a paper currency; and to issue paper upon the basis of bullion would, in such a case, be as improper as to issue paper on the basis of broadcloth, or Dutch cheeses, under existing circumstances. But all nations are agreed that bullion is better fitted by nature for such a purpose than broadcloth, or Dutch cheeses; and, consequently, as it seems to be the substance pointed out by nature herself for representing debt, it is the substance which forms the only true basis of a paper currency

45. Bullion, then, as the symbol of debt, is not only the sole proper basis of a paper currency, but is the only true regulator of its amount. As all paper currency is a "promise to pay" gold or silver bullion at some definite time, it is quite evident that the "promises to pay" floating in a nation must bear some proportion in quantity to the actual quantity of the bullion. It is quite impossible to fix any definite proportion, because that depends upon a multitude of peculiar circumstances. Experience is the only guide on the subject

46. Specie and credit, or money and promises to pay money, then, form the only true circulating medium or currency, and they are its limits. If the limits of specie and credit are once transgressed, we plunge at once into the dread abyss of Lawism, and there is no logical goal till we arrive at the assignats of 1796, or the issues in America in 1837; and even these did not reach the full limits allowed by the theory. It is impossible to exceed

the boundaries of money and credit by a single iota, without involving this absurdity—*that we can buy a thing and keep the price of it as well*

47. Money and credit, then, must always increase and decrease together. If a man's real capital is reduced from £1,000 to £100, it is quite clear that he cannot safely keep in circulation as many "promises to pay" as when he had £1,000, and if his real capital is leaving him, he must reduce his liabilities in a similar proportion. If he chooses to spend £500 in buying commodities, such as corn, it is quite clear he cannot spend the money, buy the commodity, and have the price as well. Now, what is true of a single individual is equally true of a bank, or of a nation. When an ordinary bank feels a drain upon its bullion, it must reduce it liabilities, its "promises to pay," or else the ruin of that bank is certain. Now, some people think, that though this must be true of private banks, yet it is the reverse of true applied to the Bank of England, and that, as its bullion *decreases* it ought to *increase* its issues. Sir Archibald Alison frequently reminds us of the truism that the same great law regulates the fall of a pebble and the motion of the planets. So we may say that the same great law regulates the relations between the credit and the capital of the humblest individual, the smallest bank, the Bank of England, and the British nation. Some people think that as capital decreases credit should increase. What makes the credit of Great Britain so great? Because her capital is so great. Why is the credit of Russia so low? Because her capital is so small

48. The operation of reducing "issues" or "advances," is always one which will excite much complaint, and requires to be done with much delicacy; and, indeed, the great problem in regulating the paper currency, is to discover the true mode of acting upon it, so as on the one hand to maintain always its uniformity in value with the coin it represents, and on the other not to contract it too suddenly and violently, and without giving the public sufficient warning to enable them to reduce their liabilities in proportion

49. From the amazing confusion of language and thought which pervades almost all treatises on monetary science, the plain and obvious method of controlling the paper currency has almost entirely eluded observation. No person who apprehended the true nature of banking, and expressed it in simple language, could fail to see the natural controller. The main business of commercial banking is discounting mercantile bills—that is buying debts. Discounting a bill for a merchant is not *lending* him money but *buying* a debt due to him ; and the price of such debt must follow exactly the same laws as the price of corn, or any other article. If money is very scarce, and wheat very abundant, the price of wheat must fall ; if money is very abundant, the price of wheat will rise. The price of debts obeys the same rules. If money becomes very scarce, the price of debts must fall, *i.e.*, the discount must rise. If specie becomes abundant, the price of debts will rise, *i.e.*, the discount will fall. The price of debts, then, must follow the same great laws of nature that the price of wheat does. Now, does not every man of common sense know that it is the most foolish and insane thing to try to control the price of wheat? As we have shewn in another place, it is not the fluctuation of the price of wheat that is the evil, but it is only the *sign* of evil. The real evil is the change in the proportion of the demand and supply, and the fluctuation of the price is the grand natural corrector of the evil. Does not every one know that a high price of corn is the way to *attract* corn where it is deficient, and a low price the way to *repel* it from where it is already too abundant? Does not every one with common sense know that it is the most fatal folly to force down the price of wheat when there is a real scarcity, and to sell it below the price it would naturally attain? Can any course be more suicidal?

50. Now, apply all the arguments which suggest themselves so irresistibly in the case of wheat to the case of credit, or the purchase of debts, and the same results follow. The same great law of nature operates to preserve the due proportion between specie and credit and any interference with this great law must necessarily be attended with the same evil consequences as an interference with the natural price of wheat. And yet almost all legislation up to a very recent period, and almost all writers on

political economy, and too many of the commercial world, were in a perverse combination to thwart this great law of nature, and attempt to keep the rate of discount, or the price of debts, fixed at a uniform scale!

51. While, therefore, the greater part of commercial complaints are levelled against variations in the rate of discount as the great evil, the truth is, it is only the *sign* of the evil. The real evil is the altered proportion between specie and credit, and a variation in the rate of discount is the grand natural corrector of the evil. To attempt to keep the rate of discount uniform, is to thwart and contravene the laws of nature just the same as an attempt to fix the price of wheat. Like all true laws of nature, the simplicity, beauty, and perfection of its action is marvellous, and it produces a multitude of results which are not perhaps very obvious at first. If specie is leaving the country and becoming scarce compared to credit, every principle of nature shews that the value of money must rise, *i.e.*, the rate of discount must rise; and this has a tendency to prevent the outflow of bullion, and to attract it from abroad; on the other hand, if specie be flowing into the country and likely to become too abundant compared to credit, a fall in its value, or a fall in the rate of discount *repels* it from the country. If a nation be visited with a great failure of the crops it can only buy such food from foreign countries with its commodities or its money; it cannot send its credit in payment abroad. Now, if commodities are too dear, it must pay with money, and credit in this country is the great producing power, and credit *for a time* is a great sustainer of prices by enabling people to withhold their commodities from the market. Now, raising the rate of discount curtails credit, forces sales, and thereby lowers the prices of commodities, and makes it less profitable to export specie, and more profitable to export goods. Moreover, this rise in the value of money here, *i.e.*, the low price of debts and commodities, tempts buyers from neighbouring countries to bring their money here. It thus causes an inflow of bullion and restores our currency to a uniformity of value, with that of neighbouring countries. Again, if this nation has to spend a great part of its money in buying foreign corn, it is quite clear that it has not got so much to spend in purchasing goods; an over-pro-

duction of goods, therefore, can only end in a disastrous fall in prices. And here, too, the beautiful action of this great law of nature is manifest. So enormous a proportion of the commodities of this country are produced by the credit system, that a rise in the rate of discount just hits profits between wind and water, as we may say. Consequently, a rise in the rate of discount retards and curtails production in proportion to the diminished consuming powers of the nation, and so prevents such a ruinous fall in prices as would necessarily follow an undiminished production, accompanied by a diminished power of consumption

52. In fact, when a commercial crisis occurs in a country, it invariably means that more persons are wishing to sell than there are persons to buy, or, at least, at remunerative prices. A commercial crisis invariably arises from a lack of purchasers, which is, in fact, over-production. True prudence, therefore, shews that in all commercial crises, *production should be curbed.* It is much better not to produce at all, than to produce and be obliged to sell at a loss. To produce, and be obliged to sell below the cost of production, is loss of capital. It is better, therefore, not to employ the capital at all than to lose it. Raising the rate of discount, therefore, acts as a timely warning to producers to hold hard. It is necessary to dispose of the stock already produced, before producing more, and if the stream of sale is stopped while production continues, it can only end in a more aggravated fall at last

53. Now, what is the necessary consequence of an attempt to thwart this great law of nature? In time of scarcity of food, and a necessary export of money to buy it, if the rate of discount be kept unnaturally low, nothing but money will go; commodities are too dear, they will not go. Again, money being kept at an unnaturally low rate here, no one will bring it here from neighbouring countries; consequently, great quantities of money will go out and none will come in, till at last the circulating medium will be nothing but "promises to pay," and no money to pay them with. Then, at last, violent convulsions, total destruction of credit, every one wishing to sell, and no one wishing or able to buy

54. On the other hand, if, when specie is flowing in with too great abundance, it be not repelled by a due diminution in the value of money, *i.e.*, a fall in the rate of discount, it will continue to do so until it is so superabundant that a violent fall takes place. Persons who are accustomed to depend on the incomes they derive from the interest of money, suddenly find that their means are seriously diminished. In the year 1824 there was such a plethora of capital in the country that the Scotch banks gave no interest on deposits ; after 1824 came 1825. Then wild speculations find favour in the public mind, promising higher profits; and then the community goes through the cycle of bubble speculations, extravagant credit, ending in a commercial catastrophe. We may feel quite certain that if during the various crises this country had passed through, there had been more attention paid to observe the natural rate of discount, instead of thwarting the course of nature, though the variations would have been more frequent, they would have been less violent and extreme. If specie is coming in with too great speed it is good to lower the rate of discount quickly to prevent it getting lower ; if specie is going out too rapidly, it is good to raise the rate quickly to prevent its being higher

55. Such, however, is the perversity of man, that many think that a uniform and invariable rate of discount is the great thing to be preserved, no matter what nature may say to the contrary, and their ingenuity is racked to devise a plan for always keeping it so, just as if the governor of the steam engine ought always to revolve with uniform velocity. Now, the inevitable consequence of taking these means to thwart nature will be, that when specie is scarce, it will be repelled by a lower rate than the natural one ; when it is already too abundant, it will be still further attracted by a rate higher than the natural one

56. The extreme anxiety of persons to obtain an impossible object, always to have the power of selling debts due to them at a uniform rate, has led to a very prevalent theory, which seems very innocent and simple. It being desirable always to maintain the currency at a uniform amount, they propose that, as gold goes out, paper should be issued to supply its place. This theory

is adopted by Sir Archibald Alison, who says, after condemning the theory that gold and paper must vary together—

"The true system would be just the reverse. Proceeding on the principle that the great object is to equalise the currency, and with it prices and speculations, it would *enlarge* the paper currency when the precious metals are withdrawn, and credit is threatened with a stoppage, and proportionately contract it when the precious metals return, and the currency is becoming adequate without any considerable addition to the paper"

57. There would be certainly something specious in the idea of issuing bank notes to supply the place of the gold that went out if, unfortunately, it had not been tried over and over again, and been attended unfortunately with a catastrophe. When gold was leaving the country in vast quantities in 1796, the Bank of England still maintained its issues, against its own will, it is true, but yet the *fact* illustrates the *principle*, and the consequence was the suspension of cash payments in 1797. When the Bank had got right again in 1817, a drain for foreign loans began, and the bank extended its issues in 1818, and the consequence was the second suspension of cash payments in 1819. In 1824 when bullion was departing from the country like a flood, the Bank extended its issues; then, when it saw itself right in the vortex of bankruptcy, it suddenly altered its policy, and the result of all this was the catastrophe of 1825. In 1838-39, a similar drain occurred, the Bank with marvellous perversity, maintained its rate of discount considerably below the market rate, and the result was the monetary crisis of 1839. In 1847, there was the same error and the same result. Surely these instances are enough to destroy this fatal delusion

58. In fact, Sir Archibald, and the great body of public writers who share these sentiments, wholly mistake the object to be sought for in so delicate and artificial a machine as a paper currency. The object to be aimed at is not to preserve a uniform rate of discount in this country, but to maintain a uniformity in the value of the British currency with that of other countries. If money is made artificially cheap in this country, that is, cheaper than it is in neighbouring countries, persons in this country will

export it to where it is of greater value; they will buy foreign securities, they will import foreign commodities. On the other hand, foreign nations will flood this country with their securities —just as the Americans did in 1839, when the Bank kept down the rate of discount below its proper level—because they can sell them at a better price here than in their own country. If a man wishes to sell a horse, and my neighbour will only give £90 for it, and I will give £96, he, of course, will sell the horse to me, and take away my cash. So, when the Americans wished to sell their debts, and found that in their own country they could only get £90 per cent. for them, whereas they could get £97 per cent. for them in England, as a natural consequence, they sent them to England for sale, and took away the cash. The only way for England to have stopped this would have been to give no more for these securities than the Americans would themselves; in other words, to maintain a uniformity in value between the currencies of the two countries

59. When the foreign exchanges are unfavourable to this country, the simple meaning of that is, that it is profitable to export gold. Now, where is the gold got from for exportation? From the Bank of England. And how is it got from there? By getting hold of the Bank's "promises to pay" gold on demand. Now, when the Bank of England knows that a multitude of persons are trying to get hold of its "promises to pay" for the purpose of demanding gold for them, to carry out of the country, would it not be the height of folly in the Bank to be multiplying its "promises to pay" in all directions, and selling them cheap? This would be exactly as wise as if the captain of a ship, directly he saw a storm coming on, were to set all his studding-sails and royals. When the captain sees the tempest approaching, he must get down his top-gallant masts and reef his topsails; so, when a commercial tempest is threatened, it behoves those who pilot the vessels of credit to *contract* their "promises to pay"

60. The plan proposed by Sir Archibald, and a multitude of unthinking writers, is, that when gold is leaving the country, commissioners should be appointed to issue an equal amount of inconvertible paper, which is to be withdrawn when gold comes

back again. But what is to be done with the convertible paper already in existence? Is it to be declared inconvertible? For, as long as the rate of discount is depressed, there will be a constant demand for gold in exchange for notes, and a corresponding amount of *inconvertible* paper must be issued. Let this wonderful theory be put in practice, and the drain will not cease until every sovereign has left the country; and, moreover, they never will come back again. For, as the avowed intention is to keep down the rate of discount, and to keep up prices, there is nothing to bring the bullion back again. Nothing can bring it back again here, except we can sell our commodities or debts cheaper than other nations. But it is the avowed intention of these issues to prevent that; consequently, no bullion ever will come back

61. But, moreover, this wonderful panacea of all monetary ills—issuing an inconvertible paper currency, to supply the place of the gold that goes out—is just our old friend John Law's scheme over again, of issuing paper currency based upon commodities. Those who advocate this think that the nation can send its money abroad to buy food, and have it as well in the form of paper money. Just as if a man might go into a shop, spend his money there in buying goods, and then have it again in the form of a "promise to pay." When will this stupendous delusion be eradicated from the public mind? If I have a certain quantity of money in my till, I may safely give a "promise to pay;" or, if I know for certain that money is coming in to me on a certain day, I may give my "promise to pay" at a certain date; but when I have actually spent my money, and it is gone away from me for ever, to think that I could then grant a "promise to pay" worth anything, is an idea which savours little of sanity. In 1696-97, during the re-coinage of the silver, the Bank of England might have issued £1 notes with the greatest advantage and propriety for a temporary purpose, because it knew that it would shortly have the money to pay them with; but when the money is gone from the Bank to buy corn abroad, it would be the most dangerous folly possible to issue notes to supply the place of gold

62. But there are several other considerations which point

out that the rate of discount is the true method of acting upon the paper currency. As soon as the exchange becomes so unfavourable as to make it profitable to export gold, an immense number of bills are fabricated for the purpose of being sold for the sake of the premium; and these will continue to be fabricated as long as the rate of discount is kept below that of neighbouring countries; now, raising the rate of discount strangles all such operations in the birth. If only the *numerical* amount of notes be looked to, and the rate of discount be kept down, these speculators may get their bills passed, while legitimate trade bills may be refused. A moderate rise in the rate of discount will never inflict any real injury on trade at all equal to the refusal to discount trade bills altogether; and that is the result which has always ensued from a perseverance in keeping down the value of money below the natural level

63. Moreover, when the nation is actually obliged to spend its money in buying foreign corn, or on any other object, such as war, it is quite impossible that it can have so much money to spend upon other things; its consuming powers, therefore, are diminished; it must economise in other things. Now, if the rate of discount is kept below its natural level, it stimulates and encourages production so much beyond the powers of consumption, that it must necessarily terminate in an aggravated fall in prices. A timely raising of the rate of discount is, therefore, a warning to producers to contract their operations gradually. But keeping it unnaturally low lulls them into false security; they maintain their engagements on credit on an undiminished scale, till at last the Bank, for its own safety, is obliged to pull up on a sudden—to bring up all standing. Then follows a total refusal to discount, commercial panic, and ruin

64. It is, then, an incontrovertible fundamental truth in monetary science, that specie and credit form the circulating medium, and that they must increase and decrease together. An increase of currency, without an increase of debt, has no effect but to diminish the value of the currency. The same thing happens, if, when debt is destroyed, currency is not destroyed with it. If a metallic currency increases faster than debt, nature provides a

remedy—it is immediately exported. But, with an inconvertible paper currency, this cannot happen, and when debt is destroyed, currency remains in circulation; when this goes on for any length of time, or to any extent, the inevitable result is a depreciation of the paper currency, which is shewn by the rise of the market above the Mint price of gold. This was eminently exemplified in England in the years subsequent to 1810. The extravagant speculations were followed by an enormous destruction of capital; but the currency which was issued to represent it remained in circulation, and soon manifested itself in a rapid fall of the value of paper. It was impossible that paper ever should right itself, unless this superfluous currency was destroyed. It is recorded that an Irishman once having taken a dislike to a banker, in order to spite him, collected a number of his notes and burned them. It would have been an excellent thing for the country bankers of England in 1814-15, if some one had done the same kind office for them. The quantity of paper currency was so excessive, compared to what it represented, that nothing could restore it to its par value but the destruction of a large portion of it; and this was brought about by the destruction of the issuers of it; and, when this was done, the value of the remainder rose to par

65. We have gone over most of the theories of currency which have attained the greatest practical importance. That there are others, is true; but they have generally been confined to a small knot of fanatics. But, as they seem, at last, to have died out, we need not weary our readers' patience by disturbing their peaceful oblivion

CHAPTER XV

ON THE DEFINITION OF CURRENCY

1. Having in the preceding chapters completed a general survey of the mechanism of Banking and the Foreign Exchanges, we are now compelled to examine the peculiar system of Banking which is at present established in this country; but, before we do so, we must give a little time to settle the meaning of the word **Currency.** Most persons engaged in practical business are morbidly averse to discussions on the meaning of words, thinking them to be pure waste of time. But no science was ever yet founded without such controversies, and it is precisely because writers on Economics have systematically despised and neglected the only means by which a science can be founded, and by which every other great science has been created and established, that Economics is at the present moment in such a discreditable state. In the present case this investigation is absolutely indispensable, because the Bank Charter Act of 1844, which now governs the whole monetary system of the country, is expressly founded upon a peculiar *definition* of the word **Currency**, and is expressly devised to carry out a peculiar Theory of Currency. In this chapter we must therefore investigate and settle the meaning of the word **Currency**

A very distinguished statesman has said that the word **Currency** has driven more people mad than anything except love. Nor, to say the truth, is this very surprising. If we were to assemble a company of purely literary men, and request them to "Differentiate the Equation to a Curve," we have not the smallest doubt but that such a mysterious expression might drive them to despair, whereas any moderately educated school-boy could do it at a glance. It is precisely the same with the word **Currency.** It is a term of pure Mercantile Law. Any mer-

cantile lawyer can tell in an instant what the word **Currency** means, and what it includes; whereas, those who have occupied themselves with discussions on it, know absolutely nothing of Mercantile Law, and have exactly as much chance of settling the meaning of **Currency**, as they have of Differentiating an Equation. We have already given a short account of its true meaning,* but we must now investigate the question completely

2. Our Saxon ancestors utterly discountenanced and prohibited the sale or exchange of any goods, merchandise, or cattle by private sale or bargain. It was a matter of fixed policy with them that no sales should take place except in the presence of witnesses. A series of kings made laws to this effect, and as these laws are to this very hour in spirit the Common Law of England, and are very little known, we may give a little space to quote them textually, as constitutional curiosities

Thus, among the **Dooms**, or Laws, which Hlothære and Eadric, kings of the Kentish men, about 683 A.D., established is this†—"16. That if any Kentishman buy a chattel in Lunden-wic (London), let him then have two or three true men to witness, or the king's wic-reeve. If it be afterwards claimed of the man of Kent, let him then vouch the man who sold it to warranty, in the wic at the King's Hall, if he know him, and can bring him to warranty; if he cannot do that, let him prove at the altar, with one of his witnesses, or with the king's wic-reeve, that he bought the chattel openly in the wic, with his own property, and then let him be paid its worth; but if he cannot prove that by lawful averment, let him give it up; and let the owner take possession of it"

Among the Dooms of Ine, King of Wessex (688-725 A.D.), is this‡—"25. If a chapman traffic up among the people, let him do it before witnesses. If stolen property be attached with a chapman, and he have not bought it before good witnesses, let him prove, according to the wite, that he was neither privy nor thief, or pay as wite thirty-six shillings"

* *Vol. I., p.* 49

† *Ancient Laws and Institutes of England; printed by command of William IV., p.* 14. We quote the official translation of the Anglo-Saxon

‡ *Ibid., p.* 51

Among the Dooms of Edward the Elder, son of Alfred (901-924 A.D.), is this*—"1. And I will that every man have his warrantor, and that no man buy out of port,† but have the portreeve's witness, or that of other unlying men whom one may believe. And if any one buy out of port let him incur the king's ofer hyrnes" (*i.e.*, contempt, or hearing and refusing to obey, which incurred a penalty of 120*s.*)

Among the Dooms of Æthelstan (925-960 A.D.) is this‡—"10. And let no man exchange any property without the witness of the reeve, or of the mass-priest, or of the landlord, or of the hordere, or of other unlying man. If any one so do, let him give thirty shillings, and let the landlord take possession of the exchange"

Among the Dooms of Edgar (959-975 A.D.) are these—

"4. To every burh let there be chosen thirty-three as witnesses

"5. To small burhs, and in every hundred, twelve; unless ye desire more

"6. And let every man, with their witness, buy and sell every of the chattels that he may buy and sell, either in a burh, or in a wapentake; and let every of them when he is first chosen as witness, give the oath that he never, neither for money nor for love, nor for fear, will deny any of those things of which he was witness, nor declare any other thing in witness, save that alone which he saw or heard; and of such sworn men, let there be at every bargain two or three as witnesses"

Among the Dooms of Ethelred (979-1016 A.D.) is this§—"3. And let no man buy or exchange unless he have burh and witness; but if any so do, let the landlord take possession of, and hold the property, till that it be known who rightfully owns it"

Among the Dooms of Cnut the Great (1017-1035 A.D.) is this‖—"24. And let no one buy anything above the value of four pence, either living or lying, unless he have the true witness of four men, be it within a burh, be it up in the country. For if

* *Ancient Laws and Institutes of England, p.* 68.

† That is Market Overt; in Roman Law, Portus est conclusus locus quo importantur merces et inde exportantur. Est et statio conclusa et munita.

‡ *Ancient Laws and Institutes of England, p.* 87.

§ *Ibid., p.* 120. ‖ *Ibid., p.* 167.

it then be attached, and he have no such witness, let there be no vouching to warranty; but let his own be rendered to the proprietor; and the aftergild and the wite to him who is entitled thereto"

Among the Laws of Edward the Confessor (1043-1066 A.D.) is this*—"38. Defensum erat eciam in lege, ne aliquis emat vivum animal vel pannum usatum sine plegiis et bonis testibus . . . . Et si venditor non potest habere plegios, retineatur cum pecunia donec veniat dominus ejus, aut quilibet alius, qui juste possit eum warantizare. Quod si aliter aliquis emerit, quod stulte emit perdat et forisfacturam"

William the Conqueror (1066-1087 A.D.) continued this law†—"45. Nemo emat vel vivum vel mortuum ad valenciam IIII. denariorum sine IIII. testibus, aut de burgo aut de villa campestri. Quod si aliquis rem postmodum calumpniatus fuerit, et nec testes habuerit nec warantum, et rem reddat et forisfacturam, cui de jure competit"

Also in a Charter granted by him he says ‡—

"10. Interdicimus eciam ut nulla viva pecunia vendatur aut ematur nisi intra civitates et hoc ante tres fideles testes; nec aliquam rem vetitam, sine fidejussore et waranto. Quod si aliter fecerit, solvat, et persolvat, et postea forisfacturam

"11. Item nullum mercatum vel forum sit, nec fieri permittatur, nisi in civitatibus regni nostri, et in burgis [clausis] et muro villatis, et in castellis, et in locis tutissimis, ubi consuetudines regni nostri, et jus nostrum commune, et dignitates corone nostre, que constitute sunt a bonis predecessoribus nostris deperire non possint, nec defraudari nec violari, sed omnia rite, et in aperto, et per judicium et justiciam fieri debeant"

And so also the *Mirrour of Justice* says, p. 14—"It was ordained that fairs and markets should be in places, and that the buyers of corn and cattle should pay toll to the lords' bailiff of markets or fairs; that is to say, a false penny of six shillings of good, and of good, less and of more, more; so that no toll exceed a penny for one manner of merchandise: and this toll was given to testify the contracts, *for that every private contract was forbidden*"

* *Ancient Laws and Institutes of England*, p. 191.

† *Ibid.*, p. 209. ‡ *Ibid.*, p. 212.

3. How long these Dooms continued in force we cannot say: Mr. Justice Stephen says* that they lasted till the time of Bracton: and they are in spirit the foundation of the Common Law at the present hour. It is the established principle of Common Law that if any person steals or finds any chattel belonging to any one else, and sells it privately to a third person, the true owner may reclaim it from that third person, even though he bought it honestly, and gave full value, and had no suspicion that the seller had no title to sell it. For the law holds in general that no one can sell what he does not possess himself; and it does not allow that the true owner has lost the property in the chattel or goods, by having accidentally mislaid them, or having them stolen from him

If, however, the thief or finder manages to sell the goods in *market overt*, then the buyer is by common law entitled to retain them against the true owner

However, by Statute 24 & 25 Vict. (1861), c. 99, § 100, it is now enacted that if the loser prosecutes the thief to conviction, then the court may grant a writ of summary restitution to the true owner of the property, in whose ever hands it may be, even though he may have bought it honestly, and given full value for it

In the City of London every day except Sunday is, by ancient custom, market day; and every shop is market overt for the goods which are usually sold there, but for no others. It was held by all the judges†—"that if plate be stolen, and sold openly in a scrivener's shop on the market day (as every day is a market day in London except Sunday), that this sale should not change the property; but the party should have restitution; for a scrivener's shop is not a market overt for plate, for none would search there for such a thing; *et sic de similibus, &c.* But if the sale had been openly in a goldsmith's shop in London, so that any one who stood or passed by the shop might see it, then it would change the property. But if the sale be in the shop of a goldsmith, either behind a hanging, or behind a cupboard upon which his plate stands, so that one stood or passed by the shop could not see it, it would not change the property; or if the sale be not in the shop, but in the warehouse, or other place of the house, it would

* *History of the Criminal Law, Vol. III., p.* 129.

† *The case of Market Overt,* 5 *Co:* 83 *b., Hil.,* 38 *Eliz.*

not change the property, for that is not in market overt, and none would search there for his goods. So every shop in London is market overt for such things only which by the trade of the owner are put there to sale"

But in country towns only those days are market days which are appointed by law or ancient custom; and those places only are market overt for any goods, merchandise, or cattle, which are expressly appointed for the sale of such articles. And, consequently, all sales of any articles made in any other than such places are void against the true owner, if the articles be not the property of the seller. The same rule also holds good with regard to pledging stolen goods with a pawnbroker, or other person. We might, if necessary, illustrate these doctrines by several recent cases but that would occupy too much space in such a work as this

4. Such is the law with regard to all kinds of goods, merchandise, and cattle. But with regard to **Money** the case was always different. If a person stole or found money belonging to any one else, the true owner could compel him to give it up, if he could prove the fact, and identify the money. But if the finder or thief paid away the money in the ordinary course of business; as if, for instance, a shopkeeper sold goods to the thief, and took the money in the ordinary course of his business, without knowing that it was stolen, then he could retain the money against the true owner, even though he could identify it. That is to say, the property in the money passed along with the honest possession of it in every sale or exchange. And from this peculiarity money was said to be **Current,** *i.e.*, that the *property* in it passed by delivery. And this was necessary by the very nature of commerce, because no transactions could take place if the seller was bound in every sale to inquire into the right of the buyer to the money. And from this exceptional property of money, the expression arose of the **Currency** of money, but no one for a very long time ever thought of such a barbarism as to call the money itself **Currency**

But when in the course of time Bills of Exchange, and other securities for money, came into use, it was adopted as a custom or usage by the Law Merchant, that the same rule should apply to them as applied to money; that is to say, that the property in

them should pass with the honest possession. It would have been a great impediment to all commerce if the vendor of goods had been obliged to inquire into the title of any one who offered a Bill of Exchange or Bank Note in payment of them. Consequently this principle of **Currency** was applied to all negotiable securities for money

And so important is this principle of the **Currency** of all negotiable instruments, that in the Statute respecting the restitution of stolen property, it is expressly provided that it shall not apply to negotiable instruments. It says*—"Provided that if it shall appear before any award or order made that any valuable security shall have been *bonâ fide* paid, or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanour been stolen or taken, obtained, extorted, embezzled, converted, or disposed of, in such case the Court shall not award or order the restitution of such Security"

Thus we see that the law has taken the utmost precaution to preserve as absolutely inviolable the **Negotiability** or **Currency** of all negotiable instruments under all circumstances whatever. And if such a barbarism be generally accepted as to call money **Currency,** for precisely the same reason all Negotiable Instruments must equally be called **Currency;** for they are equally subject to the same rules of Law, from which they derive the name

5. These doctrines, however, are so important as being at the very basis of the whole of our monetary system; and as they have given rise to so many controversies which are yet raging; and as they have been so misunderstood and misrepresented by literary men who never took the smallest pains to inquire into the law of the subject, that we think it will be more satisfactory to our readers not to rest satisfied with the preceding exposition, but to lay before them the actual decisions of the Courts of Law and Equity establishing them

* 24 & 25 *Vict.* (1861), *ch.* 96, § 100.

We shall therefore demonstrate to our readers as matters of pure Commercial Law—

(1.) That all Negotiable Instruments are subject to the same Law regarding their transfer and property as **Money**

(2.) That it is from this property exclusively that the name **Currency** has been derived

(3.) That all Negotiable Instruments are **Currency** as well as Money

1. *To shew that all Negotiable Instruments have the attribute of* **Currency,** *i.e., are subject to the same Law regarding their transfer as Money*

Bank Notes.—(Anonymous, 1 Lord Raymond, 738.) A Bank bill was payable to A or bearer. A gave it to B. B lost it, C found it, and assigned it over to D for valuable consideration. D went to the bank and got a new bill in his own name. A brought trover against D for the former bill. And ruled by HOLT, C. J., at Guildhall, 1698, that an action did not lie against D because he had it for a valuable consideration

The leading case, however, on the subject is that of *Miller* v. *Race* (1 Burr., 452). Finney, the true owner of a Bank Note, sent it by post to a friend in the country. The mail was robbed, and on the next day the note came into the possession of the Plaintiff, Miller, for a full and valuable consideration, and in the usual course and way of his business, and without any notice of the robbery. Finney stopped the note at the Bank. A short time after Miller applied to the Bank for payment of the note, and delivered it to Race, the defendant, a clerk in the Bank. Race refused either to pay, or return, the note to Miller; and Miller brought this action to recover possession of the note. Lord Mansfield ruled, with the unanimous concurrence of the Court, that Miller had the right to have the note given back to him as his property, because Bank Notes have the Credit and the **Currency** of money, to all intents and purposes. An action would lie against the finder; that no one disputed: but *not after* the note had been *paid away in* **Currency.** Lord Mansfield said that in the preceding case just cited, the action did not lie against the defendant because he took it in the course of **Currency;** and therefore it could not be followed in his hands. It *never*

shall be followed into the hands of a person who *bonâ fide* took it in the course of **Currency.** A bank note is constantly and universally, both at home and abroad, treated as *money*, as *cash*; and it is necessary for the purposes of commerce, that their **Currency** should be established and maintained

So in *Clarke* v. *Shee* (Cowp., 200), Lord Mansfield said—"Where notes or money are paid *bonâ fide*, and upon a valuable consideration, they shall never be brought back by the true owner; but where they come *malâ fide* into a person's hands, they are in the nature of specific property: and if their identity can be traced and ascertained, the party has a right to recover." And this doctrine is such firmly established law that there is no need to cite any more cases to support it

Cheques.—In the case of *Grant* v. *Vaughan* (3 Burr., 1516), Vaughan gave a cash note (*i.e.*, a cheque) upon his banker to B in these words, "Pay to ship 'Fortune' or *bearer*." B lost the cheque. The finder, or the possessor of it, four days afterwards came to Grant's shop, and offered the cheque in payment of some goods he bought. Grant took the cheque in the usual course of business, and gave the balance in cash. Vaughan, hearing that the cheque had been lost, stopped the payment of it. Grant brought an action against him for the amount. Lord Mansfield held that the same rule applied to cheques payable to bearer as to bank notes. WILMOT, J., said that such bills or notes as this are by law negotiable. So also YATES, J., said—"nothing can be more peculiarly negotiable than draughts or bills payable to bearer. . . . . It is just the same as a Bank Note." Hence this case established that Cheques possess the attribute of **Currency,** exactly in the same way as Bank Notes: and this doctrine is so firmly established that it is needless to quote any more cases

Bills of Exchange.—In *Peacock* v. *Rhodes* (2 Douglas, 633), a Bill of Exchange indorsed in blank was stolen and negotiated. The innocent indorsee for value was held entitled to recover against the drawer. Lord Mansfield said—"The holder of a Bill of Exchange or Promissory Note is not to be considered in the light of an assignee of the payee. An assignee must take the thing assigned subject to all the equity to which the original party was subject. If this rule applied to Bills and Promissory Notes, it would stop their **Currency.** The law is settled that

a holder, coming fairly by a note or a bill, has nothing to do with the transactions between the original parties. I see no difference between a note indorsed blank, and one payable to bearer. They both go by delivery, and possession proves property in both cases"

The same doctrine was again enforced in *Collins* v. *Martin* (1 B. & P., 648), where a banker pledged some of his customer's bills indorsed in blank with another banker, who advanced money on them honestly in the usual course of business. EYRE, C. J., delivering the judgment of the Court, said—"For the purpose of rendering Bills of Exchange negotiable, the Right of Property in them passes with the bills. Every holder with the bills takes the property, and his title is stamped upon the bills themselves. The property and the possession are inseparable. This was necessary to make them negotiable, and in this respect they differ essentially from goods of which the property and the possession may be in different persons." And this rule of law is so firmly established, that we need not quote any more cases in support of it

Foreign Bonds.—In *Gorgier* v. *Mieville* (3 B. & C., 45), the plaintiff deposited a Prussian bond in the hands of his agent, to receive the interest on it for him. The bond was made payable to any person who at the time should be the holder of it. It was proved that these bonds were sold in the market, and passed from hand to hand daily like Exchequer bills. The plaintiff's agent pledged the bond with the defendants. The Attorney-General tried to draw a distinction between bank notes, bills of exchange, and exchequer bills, because such instruments constitute a part of the circulating medium of the country, but that rule did not apply to the bond of a foreign country. But ABBOT, C. J., said—"The instrument, in its form, is an acknowledgment by the King of Prussia that the sum mentioned in the bond is due to every person who shall for the time being be the holder of it, and the principal and interest is payable in a certain mode, and at certain periods mentioned in the bond. It is, therefore, in its nature precisely analogous to a bank note payable to bearer, or to a bill of exchange indorsed in blank. Being an instrument, therefore, of the same description, it must be subject to the same rule of law, that whoever is the holder of it, has power to give title to any person honestly acquiring it"

We have now sufficiently established our first point, that all Negotiable Instruments are subject to the same rule as money with regard to title by transfer, and we now come to the two latter points, which we may conveniently take together

2. *To shew that it is this principle of Negotiability which in Commercial Law exclusively is meant by* **Currency**; *and also that all Negotiable Instruments are* **Currency**

The leading case on this subject is *Wookey* v. *Pole, Bart., & others* (4 B. and Ald., 1), and as it is absolutely decisive of the question, we must quote it at considerable length

Wookey was proprietor and possessor of an Exchequer bill for £1,000, payable to blank or order. The bill stated that if the blank was not filled up it would be payable to bearer

Wookey sent the Exchequer bill to his brokers, directing them to sell it and buy 5 per cent. Stock with the proceeds. The brokers disobeyed these orders, and pledged the Exchequer bill with Pole & Co., their bankers, and got the full amount of it, £1,000, placed to their credit, without the bankers having any knowledge of the terms on which the brokers held the bill. As soon as Wookey heard of these proceedings, he demanded the bill from Pole & Co., who refused to deliver it up, and afterwards sold it and received the proceeds. Wookey brought trover against Pole & Co. for the bill

Wookey's counsel said the question was whether the Exchequer bill was to be considered as money or goods. If it were goods it might be followed into the hands of a third person, unless it be transferred by the owner or under his authority, or by sale in market overt. Money, Bank Notes, and Bills of Exchange could not be recovered from an innocent holder for value, because they are the **Circulation** of the country: but Exchequer bills constitute no part of the **Currency** of the country, nor are they Negotiable Instruments

In giving judgment BEST, J., said—"The question which the Court is called on to decide is, whether Exchequer Bills are to be considered as goods, or as the representatives of money; and as such, subject to the same rules as to the transfer of the property in them as are applicable to money. The delivery of goods by a person who is not the owner (except in a manner authorised by

the owner) does not transfer the right to such goods: but it has long been settled that the right to money is inseparable from the possession of it. I conceive that the representative of money, which is made transferable by delivery only, must be subject to the same rules as the money which it represents. . . . It is not because the loser cannot know his money again that he cannot receive it from a person who has fairly obtained possession of it; for if his guineas or shillings had some private marks on them, by which he could prove they had been his, he could not get them back from a *bonâ fide* holder. The true reason of this rule is that by the use of money the interchange of all other property is most readily accomplished. To fit it for its purpose the stamp denotes its value, and possession alone must decide to whom it belongs. If this be correct as to money, it must be so as to what is made to represent money, and Lord Holt has himself so decided. . . . It cannot be disputed but that this Exchequer bill was made to represent money, as much as a Bank Note or Bill of Exchange. It was given for a debt due from Government: it is payable (the blank not being filled up) to bearer, and transferable by delivery, and is on its face made **Current,** *and to pass in any of the public revenues, or at the receipt of the Exchequer.* But it has been said that these bills are not used as Negotiable Instruments, as bank bills and bills of exchange are, but are the objects of sale. I do not see why they should not be used as Negotiable Instruments: they are transferred with the same facility as other bills, and I know from the legislature that they may be used in payments, for the statutes direct that they should be received for taxes. We know that bills of exchange are as frequently sold as they are delivered in payment. . . . . The receiver never inquires from whom they come, further than to satisfy himself that they are genuine bills. Indeed, when they are in blank, he has no means of ascertaining from whom they come. . . . It seems to be the opinion of L. C. J. Lee, who pronounced the judgment of the Court of K. B. in *Hartop* v. *Hoare* (3 Atkyns, 50), that there is no difference between money, bank notes, and exchequer bills. . . . . This also gives me the authority of Lord Holt for saying that there is no difference between *bank* and *exchequer bills;* and the same learned judge has decided that bills of exchange pass as money. Should the deposit of this bill

with the defendants, under the circumstances in which it was deposited, be considered as pledging the bill, that circumstance will make no difference, if the property in the bill passes by delivery." Best, J., then, agreeing with *Collins* v. *Martin*, cited above, gave his opinion against the plaintiff

HOLROYD, J.—"It has been long and fully settled that bank notes or bills, drafts on bankers, bills of exchange, or promissory notes, either payable to order and indorsed in blank, or payable to bearer, when taken *bonâ fide*, and for a valuable consideration, pass by delivery, and vest a right thereto in the transferee, without regard to the title, or want of title, in the person transferring them. This was decided as to a bank note in the case of *Miller* v. *Race*; as to a draft on a banker in *Grant* v. *Vaughan*: and as to a bill of exchange indorsed in blank, in *Peacock* v. *Rhodes*. Those cases have proceeded on the nature and effect of the instruments, which have been considered as distinguishable from goods. In the case of goods, the property, except in market overt, can only be transferred by the owner, or some person having either an express or implied authority from him; and no one can, by his contract or delivery, transfer more than his own right, or the right of him under whose authority he acts. But the Courts have considered these instruments, either promises or the orders for the payment of money, or instruments entitling the holder to a sum of money, as being appendages to money, and following the nature of their principal. In the one case they are payable to the person, whoever he may be, who is the bearer or holder of the instrument; and so, also, in the other case, unless the payment is restrained by a special indorsement." After quoting the judgments in *Peacock* v. *Rhodes* and *Miller* v. *Race*, given above, he said—"These authorities shew, that not only money itself may pass, and the right to it may arise by **Currency** alone, but further, that these mercantile instruments, which entitle the bearer of them to money, may also pass, and the right to them may arise, in the like manner, by **Currency** or **Delivery.** These decisions proceed upon the nature of the property (viz., money) to which such instruments give the right, and which is itself **Current**; and the effect of the instruments, which either give to their holders, merely as such, the right to receive the money, or specify them as the persons entitled to

receive it. The question, then, is whether these principles apply to the present case, or whether this exchequer bill, and the right thereto, follow the nature of goods, which, except in market overt, can only be transferred by the owner, or under his authority? In order to ascertain that, we must consider the nature and effect of the instrument, both as to the property which it concerns, and as to its **Negotiability** or **Currency** by law. In its original state it purports to entitle the holder to the sum of £100 and interest; and the original holder may, if he pleases, secure it to himself; but it is payable to the bearer until some name is inserted, and when that is done, it becomes payable to such nominee, or his order. But if the original holder parts with it, or keeps it in blank, he by that very act, or by his negligence if he loses it, authorises the bearer, whoever he may be, to receive the money; and so, if he were to insert his own name, but indorse it in blank, instead of restraining its negotiability, either by not indorsing it at all, or by making a special indorsement, he thereby authorises and empowers any person who may be the holder *bonâ fide*, and for value, to receive it: and he cannot revoke that authority when it has become coupled with an interest. The instrument is created by the Statute 48 Geo. 3, c. 1, and is thereby made **Negotiable** and **Current.** By § 2 the Commissioners of the Treasury are to make out exchequer bills, in such manner and form as they shall direct: and after certain things are done to put them into **Circulation.** By § 5 they may be paid in to the receiver of taxes; and in § 13 are these words—'And for the better supporting the **Currency** of the said exchequer bills, and to the end that a sufficient provision may be made for *circulating and exchanging the same for ready money*, during such time as they or any of them are to be **Current,** the Commissioners of the Treasury are empowered to contract with persons who will undertake to circulate and exchange them for ready money. An exchequer bill is, therefore, an instrument for the repayment of money originally advanced to the public, purporting thereby to entitle the bearer to receive the money put into circulation, and made **Current** by law. It is not, therefore, like goods saleable only in market overt, and not otherwise transferable, except by the owner or under his authority, but is in all those several respects similar

to bills of exchange and promissory notes, and transferable in the same manner as they are. The case, therefore, stands thus: this exchequer bill was a **Current** and **Negotiable** Instrument for the payment of money. Now money passes from one person to another by reason of its **Currency**, and for that reason only, and not because it has no ear-mark, it cannot be recovered from the person to whom it has been passed. The exchequer bill, therefore, seems to me, upon the same principle, to follow the nature of the money for which it is a security. . . . . This, like the case of a bill indorsed in blank, is payable to bearer, where the right arises from the instrument itself, and it is not necessary to deduce the title through the intermediate holders"

BAYLEY, J., quite concurred in the doctrine as to bank notes and bills of exchange—"A pawnee of goods or chattels, or a vendor out of market overt, has in general no better title than his pawnor or vendor, and cannot resist the claim of the rightful owner: but bank notes and bills of exchange stand upon a different footing in this respect from ordinary goods and chattels. The holder *bonâ fide*, and for a valuable consideration of a bank note or bill of exchange, has a good title against all the world; because, in the case of bank notes, they are considered as money, and pass as such, and it is essential for the purposes of trade that delivery should give a perfect title, and because in the case of bills of exchange this is the law and custom of merchants." J. Bayley came to the conclusion that exchequer bills were of the nature of goods, and not of bank notes and bills of exchange

ABBOTT, C. J., however, agreed with the two former learned judges, and said—"I think this instrument is of the same nature as notes and bills of exchange. . . . . Notes and bills have been distinguished from goods in regard to their transfer, for the convenience of trade and commerce, and in regard to their being mercantile and commercial instruments, and by law negotiable. It may be true that exchequer bills are not so frequently negotiated, in fact, as some other bills or notes; but I think we are to regard the negotiability of the instrument, and not the frequency of actual negotiation. . . . . Compulsion to receive an instrument in payment is not by any means requisite to give it the character of a Negotiable Instrument. No man is compelled

to take a bill of exchange in payment. . . . . For these reasons I am of opinion that exchequer bills are negotiable, and may be transferred in the same manner as bills of exchange: and that in those bills, as in bills of exchange, the property passes with the possession by every mode of transfer, fraud and collusion apart"

In *Ingham* v. *Primrose* (7 C. B. N. S., 85), WILLIAMS, J., delivering the judgment of the Court said—"It is, we think, settled law that if the defendant had drawn a cheque, and before he had issued it he had lost it, or it had been stolen from him, and it had afterwards found its way into the hands of a holder for value without notice, who had sued the defendant upon it, he would have had no answer to the action. So if he had indorsed a bill in blank, or a bill payable to his order, and it had been lost or stolen before he delivered it to any one as indorsee The reason is, that such Negotiable Instruments have by the law merchant become part of the **Mercantile Currency** of the country; and in order that this may not be impeded, it is requisite that innocent holders for value should have a right to enforce payment of them against those who, by making them, have *caused them to be part of the* **Currency.** . . . . . If an act done with such an intention (*i.e.*, of cancelling it) by the maker of a Negotiable Instrument, does not manifest the intention on the face of the instrument, it can hardly be maintained that the Act would be of any efficacy, because the instrument would nevertheless be apparently a part of the **Mercantile Currency**"

In *Whistler* v. *Forster* (14 C. B. N. S., 248), ERLE, C. J., said—"According to the law merchant, the title to a Negotiable Instrument passes by indorsement and delivery. A title so acquired is good against all the world, provided the instrument is taken for value, and without notice of any fraud"

WILLES, J.—"The general rule of law is undoubted, that no one can transfer a better title than he himself possesses; Nemo dat quod non habet. To this there are some exceptions: one of which arises out of the rule of the law merchant as to Negotiable Instruments. *These being part of the* **Currency,** are subject to the same rule as money"

In *Shute* v. *Robins* (1 M. & M., 133), LORD TENTERDEN

spoke of bankers' paper as being part of the **Circulating Medium** of the country

In *Lang* v. *Smyth* (7 Bing., 284), TINDALL, C. J., said—"The first question was whether the instruments in dispute had acquired from the course of dealing pursued in the City, the character of Bank Notes, Bills of Exchange, Dividend Warrants, Exchequer Bills, or other Instruments which form part of the **Currency** of this country"

And this quality of **Currency** or **Negotiability** is applied not only to Securities for Money of all sorts, but also to Securities for Securities for Money; as Scrip to deliver Bonds of a Foreign Government

In *Goodwin* v. *Robarts*,* the plaintiff bought some Scrip of Foreign Governments, through a stockbroker, and allowed it to remain in his hands. The stockbroker pledged it unlawfully with the defendants, *Robarts, Lubbock & Co.*, who are bankers, as security for a loan of money. The stockbroker became bankrupt and absconded; and the defendants sold the Scrip at the market price of the day. The plaintiff sued them for the amount realised by such sale. The Scrip entitled the bearer on due payment to receive definitive Bonds payable to bearer from the Foreign Governments. It was proved at the trial that—"The Scrip of loans to Foreign Governments entitling the bearer thereof to Bonds for the same amount, when issued by the Government, has been well known to, and largely dealt in by, bankers, money dealers, and members of the English and foreign stock exchanges, and through them by the public, for over fifty years. It is, and has been, the usage of such bankers, money dealers, and members of the stock exchanges, during all that time, to buy and sell such Scrip, and to advance loans of money upon the security of it, before the Bonds were issued, and to pass the Scrip upon such dealings by mere delivery as a negotiable instrument transferable by delivery [*i.e.*, as **Currency**], and this usage has always been recognised by the Foreign Government or their agents delivering the Bonds when issued to the bearers of the Scrip. This usage extended alike to Scrip issued by their agents in England, and it extended to the Scrip now in question, which was largely dealt in

* L. R. (1875) 10 *Exch.* 76; *Exch. Ch.* 377. 32 L. T. N. S. *Exch.* 199. 33 L. T. N. S. *Exch. Ch.* 272. 44 L. J. N. S. *Exch.* 57; *Exch. Ch.* 157.

as above mentioned. Such Scrip often passes through the hands of several buyers and dealers in succession before the issue of the Bonds represented by it"

The Court of Exchequer held that this Scrip possessed the attribute of **Currency**, or **Negotiability**, exactly the same as the Bonds themselves; and this judgment was affirmed by the Exchequer Chamber on the last day of its existence, July 7th, 1875

6. We have thus laid before our readers an authoritative exposition of the true legal meaning of the word **Currency**, and the subjects which are included in it. We see by a series of decisions, which are now the established Commercial Law of the country, that the word **Currency** means simply **Negotiability**, and nothing else, *i.e.*, that the property and the honest possession of those things which possess this exceptional attribute are inseparable, contrary to the general principles of the common law regarding stolen goods, merchandise, and cattle. And what does this exceptional class of articles include? Why, Money, and all Negotiable Securities to pay money of all sorts and forms, bank notes, cheques, bills of exchange, promissory notes, bonds of all sorts; in fact, money, and every kind of negotiable engagement to pay money

It will be seen, then, that in strict legal phraseology the word **Currency** can only be applied to those rights which are recorded on some material. An abstract Right cannot be lost, mislaid, or stolen, and passed away in commerce. But if it be recorded on some material substance, it may then be lost or stolen, and sold like any other material substance: and the word **Currency**, then, simply refers to some legal rules relating to the transfer of the property in it, in the case of its being stolen and passed away in commerce. For an obligation to be capable of being **Currency** in law, it must be recorded on some material so as to be capable of being carried in the hand, or put away in a drawer, and dropped in the street, and stolen from the drawer or from a man's pocket, and carried off by the finder, or thief, and sold like a piece of goods. The word **Currency** has no reference whatever to any property it has of paying, discharging, and closing debts

Nothing, therefore, can be more unphilosophical *primâ facie* than to designate the articles themselves by the name of **Currency,** because they possess the attribute of **Currency.** It is quite common to speak of the Currency of an opinion; but no one ever yet, that we are aware of, thought of calling the opinion itself Currency. It is quite usual to speak of the Currency of the Session of Parliament; but nobody ever called the Session itself Currency. This very confusion is also used in speaking of bills of exchange; because it is a common expression to speak of the currency of the bill, meaning the *time* during which it is Current; whereas the bill itself is called Currency because the property in it passes by delivery. It would be just as rational to call a horse a velocity, or a wheel a rotation, as to call money Currency; and we have shewn that in the earlier legal reports no one ever thought of such a barbarism

Nevertheless, if the force of public usage is too strong to be shaken, and the word **Currency** is too firmly established as the designation of a certain class of articles to be rejected, we must disregard its literal legal meaning, and observe its philosophical sense; because there is an enormous mass of Credit, or Rights, which is not embodied in any material instrument, and which, therefore, cannot be lost, stolen, or passed away in commerce without the owner's consent: and, consequently, though these cannot be subject to the legal rules of **Currency,** they perform a gigantic part in commerce, just in the same way as if they were recorded on paper

Taking a banker and his customer as the standard case of debtor and creditor, if I have a right of action against my banker for money, it makes not the slightest difference in the nature of the Right whether it is recorded on paper or not. If I wish to transfer the right to some one else, I may do it by means of a bank note or cheque, or a verbal order to my banker to transfer a certain quantity of the credit in my name to some one else's name. We have already shewn that in Roman law, where written instruments were not used, the creditor, the debtor, and the assignee were obliged to meet, and the creditor transferred the debt orally to the assignee. This was a valid transfer. And such a mode of proceeding is a valid transfer in English Law at the present day. But in a vast number of cases this is a very

clumsy and inconvenient way of transferring debts. It is infinitely more convenient to do it by writing. But whether the transfer be effected orally or by writing, it can make no possible difference in the nature of the Right. Consequently, if I have a Right against my banker, and if I write a cheque for the purpose of transferring this Right to some one else, this does not affect the nature of the existing Right: it is nothing more than a convenient way of transferring it to some one else. Writing a cheque does not create a new Right; it merely records on paper an existing Right. And it equally exists whether it is recorded on paper or not. Payment, therefore, by means of a bank note, a cheque, or a bank credit, is absolutely the same. Now, bank notes and cheques are Currency in strict legal phraseology; but bank credits are not Currency, because they cannot be lost, mislaid, stolen, and passed away in commerce without the consent of the owner

So, also, of a book credit, or book debt, in a tradesman's books. If I buy goods from a tradesman on credit, that credit has performed exactly the same part in **Circulating** the goods as money: because we have expressly defined Circulation to be the sale of goods for money or credit, and the credit has been equally the medium of circulation, or sale, whether it is recorded on paper or not; but it is not **Currency,** because it cannot be dropped in the streets, stolen, and transferred to some one else by manual delivery

If, then, we are compelled to adopt this barbarism, and employ the word **Currency** as a philosophical term, it must most manifestly be extended to include bank credits or deposits, book credits, and verbal credits of all descriptions

And this is exactly what commercial law does. It treats any form of credit payable by a banker on demand, as money or cash, no matter whether it be a bank note, a cheque, or a bank credit. They are all, in the eye of the law, equally payment: that is, none of them are legal *money:* that is, a debtor cannot compel his creditor to take them in payment of a debt: but if he chooses to do so without objection, they all stand on exactly the same footing as payment. The case of bank notes is so well known that we need not cite any authorities. With regard to cheques, Lord Mansfield said, in *Grant* v. *Vaughan*, that a cheque is the

same thing as a bank note. In *Pearce* v. *Davis* (1 Moo. & Rob.), PATTESON, J., said that a cheque "operates as payment until it has been presented and refused." So in *Jones* v. *Arthur* (8 Dowl., 442), COLERIDGE, J., held that tender of payment by cheque is good unless objected to on that account. Also in *Bevan* v. *Hill* (3 Camp., 381), where a person having accepted a cheque in payment, and lost it, and the banker failed, having funds to meet the cheque, Lord ELLENBOROUGH held that the cheque was payment

And the very same doctrine is true regarding a Bank Credit or Deposit. In *Gillard* v. *Wise* (5 B. & C., 134), HOLROYD, J., said—"The defendants, instead of sending a clerk to receive cash for the notes, sent them to the persons who ought to have paid them; but they sent them, not for the purpose of being paid in money, but of being placed to their credit in account. When that credit was given, the legal effect was the same as if the notes had been paid to them in money"

Thus a Right of action against a banker payable on demand is, in commercial circles, considered as money, or cash, whether it be in the form of a bank note, a cheque, or a bank credit: and though, of course, in the strict *legal* sense, only the two former can be **Currency**, yet, in a philosophical sense, if we are compelled to adopt the word, all three forms must be **Currency**

7. And so, in other points of Law, Bank Notes and Bank Credits are held to be included in the term money, or cash. In the case of *Lord Aylesbury's Will*, Lord Hardwicke held that bank notes passed under the title of cash: and in *Miller* v. *Race*, Lord Mansfield said—"Bank notes pass by a will which bequeaths all the testator's money or cash"

But the very same doctrine is held regarding a Bank Credit, or deposit, or a balance on a banking account. Thus, in *Vaisey* v. *Reynolds* (5 Russ., 12), the testator bequeathed "to his wife all his book debts, *monies in hand;* and to his executors all his monies out at interest or mortgage, notes of hand, or any security whatsoever." Lord LYNDHURST said—"The testator has referred to two descriptions of money, monies in hand, and monies out at interest or mortgage, notes of hand, and other securities. The balance in the banker's hands, though it carries interest, was not out at interest or security, and it was in the same order and

disposition of the testator, as if it had been deposited in his own drawer. It must be inferred that the testator meant to pass it by one of the two descriptions which he has used. In no sense was it money on security, and in a reasonable sense it was money in hand, and passed therefore to the wife"

So, in *Taylor* v. *Taylor* (1 Jurist., 401), where the testator bequeathed all his ready money, Lord LANGDALE said—"It is true that in strict legal language, what is called money deposited at a banker's is nothing more than a debt, and cannot be called ready money, but in the ordinary language of mankind money at a banker's is called ready money, and we must construe a will according to the ordinary language of mankind"

Again in *Parker* v. *Marchant* (1 Y. & C., 290), BRUCE, V. C., said—"Undoubtedly an ordinary balance in a banker's hands is, in a sense, a debt due from him—certainly he may be sued for it as a debt. But it may be equally true that in a sense it is ready money. . . . . The term 'debt,' however technically correct, is not colloquially, or familiarly applied to a balance at a banking house. No man talks of his banker in that character being indebted to him. Men speaking of such a subject say that they have so much at their banker's, or so much in their banker's hands, a mode of expression indicating virtual possession, rather than that right to which the law applies the term *chose-in-action*. . . . . Agreeing that the term (ready money) is applicable to money in the purse, or the house, I cannot agree that it is confined to money so placed. Money paid into a banking house, in the ordinary mode, is so paid for the purpose of being not safe merely, but *ready* as well as safe." And, consequently, the V. C. held that a Bank Credit, or deposit passed under the term "ready money." And this opinion was confirmed on appeal (1 Phil., 356) by Lord LYNDHURST—"Nobody can doubt that in the ordinary use of language, money at a banker's would be considered as 'ready money.' Everybody speaks of the sum which he has at his banker's as money: 'my money at my banker's' is a usual mode of expression. And if it is money at the banker's, it is emphatically ready money, because it is placed there for the purpose of being ready when occasion requires: it is received upon the understanding that it shall be so ready. If a man goes to his banker, the money is counted out to him on the table. If

he sends an order for the money, it is counted out to his servant, or the person in whose favour that order is made. I consider, therefore, that it is strictly 'ready money' according to the ordinary acceptation of those terms among mankind"

So again in *Manning* v. *Purcell* (2 Sm. & Giff., 284), the question was whether a balance on a current account, and a balance on a deposit account payable on demand, passed under the word moneys in a will, STUART, V. C., said—"The question as to the next subject of gift which the plaintiffs deny to be included in the gift of 'moneys,' is as to the balances of the testator at his banker's. The testator seems to have had balances upon a current account, and balances upon a deposit account. Now, the balance upon the current account certainly passed. It is also my opinion that the money, the evidence of which was the deposit notes, also passed under the description of moneys. It has been maintained in argument, that the deposit notes are the vouchers given by the bankers with whom the deposits were made as security for money, and they have been likened to the case of money secured by a bond. It is said that the balance due is simply a debt, and the deposit note is evidence of the debt, just as a bond, which shews a debt, and binds the obligor to the payment of it. But moneys deposited by a testator with his bankers, on a deposit account, the balance carrying interest, is so much money at the disposal of the testator, and is as readily accessible by him as moneys in an ordinary current account. The fact that interest is allowed upon these deposits, is a reason for the depositor more reluctantly drawing upon his deposit account; but in point of fact, there is no distinction at all shewn to me upon the custom of the bankers. The bankers have been examined in this case, and the habit is so notorious on this, that it would not require evidence to shew that where a banker holds money for which he gives a deposit note, it is just as accessible to his customer as if it was held on a current account

"If a customer having a balance of £10,000 at his banker's wants £1,000, he must take a piece of paper and deliver it to the bankers before the bankers would pay him the money which they hold for him. Now, with respect to the deposit money, the customer, if he wants that money, or any part of it, must bring the deposit receipt instead of an ordinary cheque; but that does not

make it less accessible to him than if the bankers held it liable to be paid on cheques. If the slightest doubt were cast upon the accessibility of a depositor's money which a banker holds on deposit receipts, it would soon put an end to the account altogether

"My decision proceeds upon this, that as to the deposit notes, as much as to the current account, the relation of banker and customer exists; that the bankers holding money of a customer, whether on a deposit account or a current account, unless there is some express contract to take it out of the ordinary case of deposit, holds it as money, and as money, so readily accessible to the customer on the relation of banker and customer, that it is held to pass under the description of money generally"

8. The importance and the practical bearing of these investigations and decisions are evident. In modern times private bankers discontinued issuing notes, and merely created Credits in their customers' favour to be drawn against by Cheques. These Credits are in banking language termed Deposits. Now many persons seeing a material Bank Note, which is only a Right recorded on paper, are willing to admit that a Bank Note is cash. But, from the want of a little reflection, they feel a difficulty with regard to what they see as Deposits. They admit that a Bank Note is an "Issue," and "Currency," and "Circulation," but they fail to see that a Bank Credit is exactly in the same sense equally an "Issue," "Currency," and "Circulation"

When a banker, in exchange for money, or in exchange for the purchase of a Bill of Exchange, gives his Notes to his customer, he creates and **Issues** a Right of action against himself, which the customer may transfer to any one else. But also when a banker in exchange for money, or in Exchange for a Bill of Exchange, creates a Credit in his books in his customer's favour, he equally creates and "**Issues**" a Right of action against himself; and by delivering a cheque book to his customer he thereby engages to pay the Credit to any one else to whom his customer may transfer it. Either form of Credit, therefore, is equally the **Issue** of a Right of Action to the customer. He has exactly the same right to demand payment of his Credit from the banker,

and exactly the same right to transfer it to any one else, whether it be by Note or by Cheque

Unreflecting persons see only so many figures in a book; they are startled at hearing them called Wealth: but, in fact, these figures are only the evidence of so many transferable rights of action in the persons of the bankers' creditors. These rights are just as much "issued" and in "circulation" as if they were Notes. They are equally liabilities to pay on demand. No doubt it is usual in bank returns to distinguish between Notes and Credits; but suppose they were not so distinguished, but merely called liabilities, would not every one see that they stand on exactly the same footing? Would any one then make any difference between them?

Thus these Bank Credits, or Deposits, are a mass of Property, just like so much corn or timber; they are *Pecunia*, *Bona*, *Res*, *Merx*; they are now, though, of course, legally only debts, for all practical purposes the current coin of commerce: and the great medium of payment of the country: and specie is now only used occasionally, and as a supplement to payments in Credits of different forms

Nothing can be more unfortunate or misleading than the expression which is so frequently used that banking is only the "Economy of Capital," and that the business of a banker is to borrow money from one set of persons and lend it to another set. Bankers, no doubt, do collect sums from a vast number of persons, but the peculiar essence of their business is, not to lend that money to other persons, but on the basis of this bullion to create a vast superstructure of Credit; to multiply their promises to pay many times: these Credits being payable on demand and performing all the functions of an equal amount of cash. Thus banking is not an Economy of Capital, but an increase of Capital; the business of banking is not to lend money, but to create Credit: and by means of the Clearing House these Credits are now transferred from one bank to another, just as easily as a Credit is transferred from one account to another in the same bank by means of a cheque. And all these Credits are in the ordinary language and practice of commerce exactly equal to so much cash or Currency

9. After the authoritative exposition we have given above of the real meaning of the word **Currency,** and the judicial decisions of what it includes, it is rather a work of supererogation to cite the opinions of lay writers. The controversies as to the meaning of Currency did not arise until Smith had been several years in his grave; but we think that no one who reads his work can form any doubt but that bills of exchange are necessarily included under his designation of paper money. The question, however, is extremely unimportant, and would take far too much space to examine thoroughly

The first occasion on which we have met the term Circulating Medium is in the debate on the Bank Restriction Act, 1797,* in which Mr. Fox said he wished that gentlemen, "instead of amusing themselves with new terms of 'Circulating Medium' and the like," which shews that it must then have been of very recent introduction. Mr. Pitt, in his reply, said—"As so much has been said upon the nature of a Circulating Medium, he thought it necessary to notice that he did not for his own part take it to be of that empirical kind which had been generally described. It appeared to him to consist in *anything* that answered the great purposes of trade and commerce, whether in specie, paper, or any other term that might be used." It is quite evident, therefore, that bills of exchange, cheques, and bank credits would all be included under such a designation, because they all effect the circulation of merchandise

The first place in which we have met the doctrine that the word Currency, or Circulating Medium, is to be restricted to specie and Bank Notes only, is in a letter of Mr. Boyd, a well known financial agent, to Mr. Pitt. He says, p. 2—"By the words 'Means of Circulation,' 'Circulating Medium,' and 'Currency,' which are used almost as synonymous terms in this letter, I understand always *ready money*, whether consisting of Bank Notes or specie, in contradistinction to Bills of Exchange, Navy Bills, Exchequer Bills, or any other *negotiable* paper, which form no part of the circulating medium, as I have always understood the term. The latter is the circulator; the former are merely objects of circulation." But Mr. Boyd, in his preface, says—"But from the mere return of bank notes (without that of the *balances on the books*,

* *Parliamentary History of England, Vol. XXXIII., p.* 340.

for which the bank is likewise liable, and of the specie in its coffers) no accurate estimate can be formed of the positive difference between the present and the former circulation." Mr. Boyd therefore, expressly includes Bank Credits, or Deposits, under the title Currency, and as his notion of Currency was ready money, it is quite evident that Cheques were also Currency in his opinion, because we have seen that Mercantile Law considers Bank Notes, Cheques, and Bank Credits, as all equally ready money

Whether this opinion of Mr. Boyd's gained any adherents we cannot say ; but, in opposition to this novel doctrine, Mr. Henry Thornton, one of the authors of the Bullion Report, said *—" A multitude of bills pass between trader and trader in the country in the manner that has been described ; and they evidently form, in the strictest sense, a part of the Circulating Medium of the country." And in a note on this passage he says—" Mr. Boyd in his publication addressed to Mr. Pitt on the subject of the Bank of England issues, propagates the same error into which many others had fallen, of considering bills as no part of the circulating medium of the country."—After quoting the above passage from Mr. Boyd, he says—" It will be seen in the progress of this work, that it was necessary to clear away much confusion which had arisen from the want of a sufficiently full acquaintance with the several kinds of paper credit, and, in particular, to remove, by a considerable detail, the prevailing errors respecting the nature of bills, before it could be possible to reason properly upon the effects of paper credit "

Certainly no influential person at that time adopted such an opinion, and we may quote a passage from the speech of the Marquis of Tichfield, one of the most distinguished of the rising men of the day, on Mr. Western's motion, in 1822, regarding the Act of 1819. He said—" Economy of money was, by contrivances to spare the use of it, according to the description of his right honourable friend, by substitution of the precious metals in the shape of voluntary credit. Every new contrivance of this kind, and every one improved, had that tendency. When it was considered to how great an extent these contrivances had been practised, *in the various modes of* **Verbal, Book,** *and* **Circulating Credits,** *it was easy to see that the country*

* *Inquiry into the Nature and Effects of the Paper Credit of Great Britain*, p. 40.

had received a great addition to its **Currency.** *This addition to the* **Currency** *would, of course, have the same effect as if gold had been increased from the mines.*" Here, therefore, we see it explicity stated that **Credit,** in all its shapes and forms, was independent, exchangeable property, of the value of, and producing the same effects as, gold

10. The question "What the term Currency includes?" was much discussed before the Committee of 1840; but it is only necessary to state here the views of those witnesses whose opinions prevailed with the framers of the Bank Charter Act of 1844

Mr. GEORGE WARDE NORMAN, a Director of the Bank of England, was asked—

1691. "Are there any grounds for considering the deposits of the Bank of England as Currency?—No, I think not

1692. "Do you consider that any deposits, merely in their character of deposits, can be considered as Currency?—No, I do not

1693. "Will you state what, in your opinion, forms the distinction between Currency and deposits?—I consider that, looking broadly at deposits and Currency, they are quite distinct; they have little to do with each other. But I conceive that the use of deposits is one of the banking expedients, which is available for economising currency, along with a great many others. I do not consider them as Currency or money. I ought to observe, perhaps, to the Committee, that I employ the words 'money' and 'currency' as synonymous. Deposits are used by means of transfers made in the books of bankers; and these afford the means of adjusting and settling transactions, and *pro tanto* dispense with a certain quantity of money; or they may be set off against each other, from one banker to another, to a certain extent, and thus produce the same effect. Still they possess the essential qualities of money in a very low degree

1694. "Do you entertain a similar opinion as to Bills of Exchange?—Yes, exactly; I think they are also used to economise Currency. I look upon them as banking expedients for that purpose; but they do not possess fully the qualities which I consider money to possess

1695. "Will you explain the difference between the functions

which money will perform and those which Bills of Exchange or deposits will perform?—To answer that question fully, one must, I am afraid, take rather a wide view; but I look upon it that the three most essential qualities money should possess are that it should be in universal demand by everybody, in all times and all places; that it should possess fixed value; and that it should be a perfect numerator. There are other qualities; but I think these are the most essential. Now, when I look at all banking expedients, I find they do not possess these qualities fully. They possess them in a very low degree; and, therefore, as we see took place in the autumn of 1835, with a very large increase of the deposits of the Bank, the circulation diminished, and there was every appearance of the effects of contraction: there was an increased influx of treasure; and I conceive from that there were lower prices. By a numerator I mean that which measures the value of other commodities with the greatest possible facility. If we look at all these banking expedients, we see that they possess the three qualities which I have mentioned in a very much lower degree

1696. "Will you state in what respect?—I can only take them one by one. A Bill of Exchange is an instrument commonly payable at some future time, at a certain place, and to some particular individual; it is of no use to any other individual, except it is indorsed to him. A man cannot go into a shop with a Bill of Exchange and buy what he wants; he could not pay his labourers with a Bill of Exchange. The same with a banker's deposit, he can do nothing of that sort with that; he can do with less money than he would otherwise employ, if he has Bills of Exchange, or bankers' deposits; but he cannot, with Bills of Exchange or bankers' deposits, do whatever he could with sovereigns and shillings. By a banker's deposit, I mean a credit in a banker's books; nothing more nor less than that"

11. Mr. Samuel Jones Loyd, now Lord Overstone, was asked—

2655. "What is it that you include in the term circulation?—I include in the term circulation, metallic coin, and paper notes promising to pay the metallic coin to bearer on demand. . . .

2661. "In your definition, then, of the word circulation, you do not include deposits?—No, I do not

2662. "Do you include Bills of Exchange?—No, I do not

2663. "Why do you not include deposits in your definition of circulation?—To answer that question, I believe I must be allowed to revert to first principles. The precious metals are distributed to the different countries of the world by the operation of particular laws, which have been investigated and are now well recognised. These laws allot to each country a certain portion of the precious metals, which, while other things remain unchanged, remains itself unchanged. The precious metals, converted into coin, constitute the money of each country. That coin circulates sometimes in kind; but, in highly advanced countries, it is represented to a certain extent by paper notes, promising to pay the coin to bearer on demand; these notes being of such a nature in principle that the increase of them supplants coin to an equal amount. Where those notes are in use, the metallic coin, together with those notes, constitute the money or Currency of that country. Now, this money is marked by certain distinguishing characteristics; first of all, that its amount is determined by the laws which apportion the precious metals to the different countries of the world; secondly, that it is in every country the common measure of the value of all other commodities, the standard, by reference to which the value of every other commodity is ascertained, and every contract fulfilled; and, thirdly, it becomes the common medium of exchange for the adjustment of all transactions equally at all times, between all persons, and in all places. It has, further, the quality of discharging these functions in endless succession. Now, I conceive that neither deposits nor Bills of Exchange, in any way whatever, possess these qualities. In the first place, the amount of them is not determined by the laws which determine the amount of the precious metals in each country; in the second place, they will in no respect serve as a common measure of value, or a standard, by reference to which we can measure the relative value of all other commodities; and, in the next place, they do not possess that power of universal exchangeability which belongs to the money of the country

2664. "Why do you not include Bills of Exchange in circulation?—I exclude Bills of Exchange for precisely the same reasons that I have stated in my former answer for excluding deposits. There is another passage in the same report which

appears to me to shew very clearly that the French Chamber have fully appreciated the distinction between Bills of Exchange and money—'Every written obligation to pay a sum due may become a sign of the money: the sign has acquired some of the advantages of circulating money; because like bills of exchange, it may be transmitted by the easy and prompt method of indorsement. But what obstacles there are! It does not represent at every instant to its holder the sum inscribed on it; it can only be paid at a distant time: to realise it at once, it must be parted with. If one finds any one sufficiently trustful to accept it, it can only be transferred by guaranteeing it by indorsement. It is an eventual obligation which one contracts one self, and under the weight of which, until it is paid, one's credit suffers. One is not always disposed to reveal the nature of one's business by the signatures one puts in circulation. These inconveniences led people to find out a sign of money still more active and more convenient, which shares, like the Bill of Exchange, the qualities of metallic money, because it has no other merit but to represent it, but which can procure it at any moment; which, like the piece of money, is transferred from hand to hand, without the necessity of being guaranteed, without leaving traces of its passage. The note payable to bearer on demand, issued by powerful associations formed under the authority and acting under the continual observation of government, has appeared to present these advantages. Hence Banks of circulation'

2665. "Under similar circumstances, will the aggregate amount credited to depositors in bankers' books bear some relation to the quantity of money in the country?—During temporary fluctuations in the amount of circulation, all other things remaining unchanged, I conceive the amount of deposits will be affected by such fluctuations

2666. "Is the amount of bills of exchange dependent in some degree on the quantity of money?—I apprehend that it is dependent in a very great degree. I consider the money of the country to be the foundation, and the bills of exchange to be the superstructure raised upon it. I conceive that bills of exchange are an important form of banking operations, and the circulation of the country is the money in which these operations are to be adjusted; any contraction of the circulation of the country will,

of course, act upon credit; bills of exchange, being an important form of credit, will feel the effect of that contraction in a very powerful degree; they will, in fact, be contracted in a much greater degree than the paper circulation

2667. *Sir Robert Peel:* "What are the elements which constitute money in the sense in which you use the expression, 'quantity of money?' What is the exact meaning you attach to the words 'quantity of money—quantity of metallic Currency?' —When I use the words quantity of money, I mean the quantity of metallic coin and of paper notes, promising to pay the coin on demand, which are in circulation in this country

2668. "Paper notes payable by coin?—Yes

2669. "By whomsoever issued?—Yes

2670. "By country banks as well as other banks?—Yes

2671. *Chairman:* "Would this superstructure, consisting of sums credited to depositors in bankers' books and bills of exchange, equally exist, although no notes payable in coin on demand existed in the country?—Yes; I apprehend that every question with respect to deposits, and with respect to bills of exchange, is totally distinct from the question which has reference to the nature of the process of substituting promissory notes in lieu of coin, and of the laws by which that process ought to be governed. If the promissory notes be properly regulated, so as to be at all times of the amount which the coin would have been, deposits and bills of exchange, whatever changes they may undergo, would sustain these changes equally, either with a metallic Currency, or with a paper Currency properly regulated; consequently, every investigation respecting their character or amount, is a distinct question from that which has reference only to the substitution of the paper notes for coin

2672. "There would be no reason why, if there were no notes payable in coin on demand, the amount of this superstructure should be less than it now is, with a mixed circulation of specie and of notes payable on demand?—None whatever. I apprehend that, upon the supposition that the paper notes are kept of the same amount of the metallic money, the question of the superstructure, whether of deposits or of bills of exchange remains precisely the same

2673. "That answer takes for granted that, in the first case

the metallic Currency, and, in the second case, the metallic Currency, plus the notes payable on demand, are the same in quantity ?—Yes

2674. *Sir Robert Peel:* "You suppose the notes payable on demand to displace an amount of coin precisely equal to those notes ?—They ought to be so under a proper regulation of the paper money, otherwise they are not kept at the same value as coin

2675. *Mr. Attwood:* "Would you consider that the superstructure of bills of exchange, founded entirely upon a metallic Currency, might, at particular times, become unduly expanded ? —The answer to that question depends entirely upon the precise meaning of the word 'unduly.' I apprehend, undoubtedly, that it is perfectly possible that credit, and the consequences which sometimes result from credit, viz., over-banking in all its forms, and the over issue of bills of exchange, which is one important form of over-banking, may arise with a purely metallic Currency; and it may also arise with a currency consisting jointly of metallic money and paper notes promising to pay in coin ; and I conceive further, that if the notes be properly regulated, that is, if they be kept at the amount which the coin otherwise would be, whatever over-banking would have arisen with a metallic Currency, would arise, and to the same extent, neither more or less, with money consisting of metallic coin and paper notes jointly

2676. "May not over-banking and over-issue of bills of exchange, forming a superstructure based upon money composed of metal and paper notes, derange the certainty of the notes being duly paid in gold ?—I apprehend that if the paper notes be properly regulated, according to the sense which I have already attributed to that expression, and if a proper proportion of gold be held in reserve, the solidity of the basis cannot be disturbed; that is, that if there be a proper contraction of the paper notes as gold goes out, the convertibility of the paper system will be effectually preserved by the continually increasing value of the remaining quantity of the Currency, as the contraction proceeds"

About this period, and for a long time preceding, the greatest part of the Circulating Medium of Lancashire were bills of exchange, which sometimes had 150 indorsements on them before they came to maturity. Lord Overstone was asked—

3026. "Does not the principal circulation of Lancashire consist of bills of exchange?—As I contend that bills of exchange do not form a part of the circulation, of course I am bound, in answer to that question, to say No

3027. "Is there not a large quantity of bills of exchange in circulation in Lancashire?—Undoubtedly, wherever a large mass of mercantile or trading transactions take place, there will exist a large amount of bills of exchange; and that is the case, to a great extent, in Lancashire

3028. "Do not the bills exceed, to an immense amount, the issue of notes payable on demand in Lancashire?—Undoubtedly they do, to a great amount"

12. Mr. Hume had a long fencing match with Lord Overstone as to the distinction between Bank Notes and Deposits. Lord Overstone admitted that a debt might be discharged either by the transfer of a Bank Note, or by the transfer of a Credit in the books of the Bank: but he strongly contended that Bank Notes are money, and that Bank Credits, or Deposits, are not

3148. "Do you consider any portion of the deposits in the Bank of England as money?—I do not . . . .

3150. "Could 20,000 sovereigns have more completely discharged the obligation to pay the £20,000 of bills than the deposits did?—Where two parties have each an account with a deposit bank, a transfer of the credit from one party to the credit of another party, may certainly discharge an obligation in the same manner, and to the same extent to which sovereigns would have discharged that obligation . . . .

3169. "Will not the debt between the two be discharged thereby?—Yes

3170. "In the one case I have supposed that payment of £1,000 was made by means of notes in circulation; payment was made by the delivery of these notes from one hand to another, and they are transported from place to place: but in the case of a payment made by means of a transfer in the books of the bank from one account to another, I ask you are not those payments equally valid, and would not the debt be discharged equally in either case?—In the one case the debt has been discharged by the use of money: in the other case the debt has been discharged

without the necessity of resorting to the use of money, in consequence of the economising process of deposit business in the Bank of England

3171. "Can the debt of £1,000 which one person owes to another be discharged, without money being paid, or its value?—A debt of £1,000 cannot be discharged without, in some way or other, transferring the value of £1,000; but that transfer of value may certainly be effected without the use of money

3172. "Was not the deposit transfer in the Bank of England, to satisfy that debt of £1,000, of the same value as the £1,000 notes which passed in the other case?—A credit in the Bank of England I consider is of the same value as the same nominal amount of money; and if the credit be transferred, the same value I consider to be transferred as if money of that nominal amount had been transferred . . . .

3177. "Is there any fallacy in the statement that in the accounts published by the Bank, their liabilities are divided into two heads, circulation and deposits?—I am not prepared to state that there is any fallacy in it

3178. "Have you not said that deposits do not, in any way whatever, possess the qualities of money?—If I have said so, I shall be glad to have the statement laid before me

3179. "Have you not, in question 2663, enumerated certain distinguishing characteristics of money?—I have

3180. "Have you not, in the same question, stated that deposits do not, in any way whatever, possess those characteristics?—Yes, I have

3181. "Have you not, in answer to previous questions, admitted that for the discharge of debts, deposits have the characteristics of money?—All that I have admitted is, I believe, that a deposit may, under certain supposed circumstances, be used to discharge a certain supposed debt"

Lord Overstone also said (3132)—"Will any man in his common senses pretend to say that the total amount of transactions adjusted at the Clearing House are part of the money, or circulating medium of the country?" No, of course, no one says that a *transaction* is money; but the operations of the Clearing House consist exclusively of the transfers of Bank Credits from

one bank to another; and, most undoubtedly, these Bank Credits are part of the circulating medium of the country

Now, we have already seen that in Roman Law these Rights are expressly classed as *Pecunia;* we have seen, that both by our Courts of Law and Equity they are held to be equivalent to Money; and Lord Overstone has himself admitted that they are of the same nominal value as money. How, then, can it be contrary to common sense to say that they are part of the circulating medium of the country? However, to avoid all such discussions, every one must admit that they have now become, in consequence of the general spread of the use of banking, the great medium of the payments of the country. And, therefore, those who consider the essence of money to be "closing debt," must admit them to be money. Thus they are answered by their own arguments; which are, however, erroneous, because money is not that which may happen to close a debt, but that which a debtor can by law compel his creditor to take in payment of a debt

Lord Overstone further said (3082)—"When I give a definition of 'Currency,' of course it is Currency in the abstract: it is that which Currency ought to be: that definition properly laid down, and properly applied, will include paper notes payable on demand, and it will exclude bills of exchange"

Here, again, Lord Overstone is absolutely wrong. It will be seen from the judicial decisions given above that it is perfectly impossible to frame a true definition of Currency which shall include bank notes and exclude bills of exchange: and, moreover, no bank notes in England, except Bank of England notes, are money; because no debtor can compel his creditor to take any bank notes in payment of a debt, except Bank of England notes, and these only so long as the Bank pays them in money on demand. If the Bank were to stop payment, Bank of England notes would immediately cease to be legal tender; a consideration which will be found of the greatest importance when we come to investigate the mechanism and operation of the Bank Charter Act of 1844

13. Lastly, we may quote Colonel Torrens, because he was not only one of the most influential of this school, but it was sometimes alleged that he was, in reality, the author of the scheme

which Sir Robert Peel adopted in his Bank Charter Act of 1844. He says*—"The terms Money and Currency have hitherto been employed to denote those instruments of exchange which possess intrinsic or derivative value, and by which, from *law or custom*, debts are discharged and transactions finally closed. Bank notes, payable in specie on demand, have been included under these terms as well as coin, because, by law and custom the acceptance of the notes of a solvent bank, no less than the acceptance of coin, liquidates debts and closes transactions; while bills of exchange, bank credits, cheques, and other instruments by which the use of money is economised, have not been included under the terms money and Currency, because the acceptance of such instruments does not liquidate debts and finally close transactions"

Again he says, in reply to some perfectly just observations of Mr. Fullarton—"It is an obvious departure from ordinary language to say that whether a purchase is effected by a payment in bank notes, or by a bill of exchange, the result is the same. According to the meaning of the term, Money and Credit, as established by the universal usage of the market, a purchase effected by a payment in bank notes is a ready money purchase, while a transaction negotiated by the payment of a bill of exchange is a purchase upon credit. In the former case the transaction is concluded, and the vendor has no further claim upon the purchaser; in the latter case the transaction is not concluded, and the vendor continues to have a claim upon the purchaser until a further payment has been made in satisfaction of the bill of exchange. A bank note liquidates a debt, a bill of exchange records the existence of a debt, and promises liquidation a future day. Mr. Fullarton not only inverts language, but mis-states facts, when he says that the transactions of which bank notes have been the instruments must remain incomplete until the notes shall be returned upon the issuing bank, or discharged in cash. A bank note for £100 may pass from purchasers to vendors many times a day, finally closing on the instant, each successive transaction. A bill of exchange may also pass from purchasers to vendors many times a day, but no one of the successive transactions of which it is the medium can be finally

* *The Principles and Practical Operation of Sir Robert Peel's Act of* 1844, *explained and defended, p.* 79.

closed until the last recipient has received *in coin or in bank notes the amount it represents*

"Now it is the necessity of ultimate re-payment which constitutes the main point of distinction, which marks the boundary between forms of credit and money. It is a necessity which applies to bills of exchange and cheques, but which does not apply to bank notes; and, therefore, upon Mr. Fullarton's own shewing, upon his own definitions and his own conditions, as to what constitutes money, bank notes come under the head of money: while bills of exchange and bankers' cheques, and such other instruments as require ultimate payments, transfers, and settlements, do not come under the phrase money. . . . Upon Mr. Fullarton's own shewing money consists of those instruments only by which debts are discharged, balances adjusted, and transactions finally closed: and, therefore, Mr. Fullarton, unless he should choose to continue to contradict himself, must admit that bank notes are, and that bills of exchange, cash credits, and cheques are not, money"

14. We have now cited at length the doctrines upon which the Bank Charter Act of 1844 is based, and we have now to examine the necessary logical consequences to which these doctrines lead

Mr. NORMAN said that money, or Currency, should possess fixed value, and be a perfect numerator. But how can money, or any thing, possess fixed value, when its value is changing from hour to hour?—An instrument of credit may preserve an equality of value with respect to money, but not with respect to anything else, unless it is expressed to be payable in it. He said that he meant by a numerator that which measured the value of other commodities with the greatest facility. Why does a promise to pay £50 measure the value of things with less facility than £50 itself?

It is not a little amusing to find the celebrated phrase of the Roman Catholic Church,—*Quod semper, quod ubique, quod ab omnibus*, starting up and meeting us in a discussion on Currency. In Lord Overstone's opinion, money and Currency are identical, and include the coined metallic money, and the paper notes promising to pay the bearer coin on demand; and, he says, that

the characteristic of their being money is, that they are received equally at "*all times, between all persons, and in all places.*" For the sake of shortness, let us designate this phrase by 3A, from the three alls in it. He excludes Bills of Exchange from the designation of Currency, because "they do not possess that power of universal exchangeability which belongs to the money of the country." This definition is fatal to Lord Overstone's own view. In fact, if it be true, there is no such thing as money or Currency at all. In the first place, it at once excludes the whole of bank notes. The notes of a bank in the remote district of Cumberland would not be current in Cornwall; *therefore* they are not 3A; *therefore* they are not Currency. Again, the notes of a bank in Cornwall would not be current in Cumberland; *therefore* they are not Currency. Similarly, there are no country bank notes which have a general Currency throughout England; therefore no country bank notes are 3A; *therefore* no country bank notes are Currency. Till within the last fifty years or so, Bank of England notes had scarcely any Currency beyond London and Lancashire; in country districts a preference was universally given to local notes; *therefore* Bank of England notes were not 3A; they had not a power of "universal exchangeability"; *therefore* they were not Currency. Bank of England notes would, even now, not pass throughout the greater part of Scotland. If, therefore, the test of 3A and "universal exchangeability" be applied, the claims of all bank notes to be considered as Currency are annihilated at once. The acceptance of a Baring or a Rothschild would be received in payment of a debt by a far larger circle of persons than the notes of an obscure and remote country bank

But the universality of Lord Overstone's assertion is fatal to his argument in other ways. On the Continent, silver is the legal standard of value; in England, silver, like copper, is merely coined into small tokens, called shillings, &c., which are made to pass current above their natural value, and are only legal tender for a very trifling amount, hence it cannot be used in the adjustment of *all* transactions; therefore it is not 3A; therefore it is not Currency. There are other countries where gold is not a legal tender, therefore it fails to satisfy Lord Overstone's test, therefore it is not Currency. If, then, the test proposed by Lord Overstone

be considered as correct, it is easy to see that there is no substance or material whatever that will not fail under it; and, therefore, *there is no such thing as Currency*

The fact is, that the only difference between a Bill of Exchange and a Bank Note is, that the former is a promise of a deferred payment, and the latter that of an immediate one, and there is less risk in taking the latter than the former. From these circumstances, a Bank Note possesses a greater *degree* of circulating power than a Bill of Exchange. But, in the Midland Counties of England, it used to be quite common for the banks to issue the bills of exchange they had discounted with their own indorsement upon them. In which respect they were in every way equivalent to Bank Notes; moreover, there is not the same inducement to put a bill into circulation as a Bank Note, because the former increases in value as the day of payment approaches, and it is unprofitable to keep a note idle. But it is to the last degree unphilosophical to maintain that these two obligations are of different *natures*, because they are adapted to circulate in different *degrees*

15. Every commercial lawyer would at once perceive the fundamental fallacy of the reasons why Colonel Torrens and others maintain that Bank Notes are Currency, and that Cheques and Bills of Exchange are not. They suppose that bank notes pass without indorsement, and that bills of exchange do not, Even if that were true, it would not be any valid ground for the distinction, because such a thing would in no way affect the nature of the instrument. It is wholly untrue to suppose that bank notes and money are the only things which close transactions. By the table given above* it is seen that upwards of 95 per cent. of commercial payments and receipts were made by Messrs. Morrison and Co. in instruments of credit, other than bank notes

But it is a very great mistake to say that bank notes pass without indorsement and bills of exchange do not. At the time the Bank of England was founded, it was supposed to be illegal for any such things as promissory notes to pass by assignment. The negotiability of bank notes had to be provided for by the Act.

* *Ch. IV.*, § 99.

It was enacted, that all the Bank's bills obligatory and of credit, made or given to any person, might, *by indorsement of such person*, be freely assigned to any person who should voluntarily accept them, and so by such assignees *toties quoties* by indorsement thereon, and all such assignees might sue thereon in their own names

The assignment of the Goldsmiths' notes, or the private bankers' notes, was held to be illegal much later than this. In 1703 it was decided that no promissory notes were assignable or indorsable over within the custom of merchants. In 1704 the Act was passed which allowed promissory notes to be assigned by indorsement like Bills of Exchange. It is true that the *custom* of indorsing Bank of England Notes, and, it is probable country bank notes too, soon fell into disuse, but that makes no difference in the *law* of the subject

It is also an error to suppose that Bills of Exchange require an indorsement at each transfer. A Bill of Exchange may be made payable to bearer, and then it requires no indorsement at all. Bills, however, are generally drawn payable to order, and then they require that the payee should indorse them; but he may do that without making himself liable on them, as is done in many cases. After the first indorsement in blank, the Bill is payable to bearer, and may be passed by mere delivery, in all respects like a Bank Note. "I see no difference," said Lord Mansfield, "between a note indorsed in blank, and one payable to bearer." "And," says Mr. Justice Byles,* "a transfer by mere delivery, without indorsement, of a Bill of Exchange, or Promissory Note, made or become payable to bearer, does not render the transferor liable *on the instrument* to the transferee

"And it is conceived to be the general rule of the English law, and the fair result of the English authorities, that the transferor is not even liable to refund the consideration, if the bill or note so transferred by delivery, without indorsement, turns out to be of no value by reason of the failure of the other parties to it. For the sending to market of a bill or note payable to bearer without indorsing it, is *primâ facie* a sale of the bill. And there is no implied guarantee for the solvency of the maker, or of any other party

* *A Treatise on the Laws of Bills of Exchange, etc., 8th Edit., p.* 146.

"If a bill, or note, made or became payable to bearer, be delivered without indorsement, not in payment of a pre-existing debt, but by way of exchange for goods, for other bills or notes, or for money transferred to the party delivering the bill at the same time, such a transaction has been repeatedly held to be a sale of the bill by the party transferring it, and a purchase of the instrument, with all risks, by the transferee. 'It is extremely clear, said Lord Kenyon, 'that if the holder of a bill sent it to market without indorsing his name upon it, neither morality, nor the law of this country, will compel him to refund the money for which he sold it, if he did not know at the time that it was not a good bill.' So, when A gave a bankrupt, before his bankruptcy, cash for a bill, but refused to allow the bankrupt to indorse it, thinking it better without his name, and afterwards, on dishonour of the bill, proved the amount under the commission, the Lord Chancellor ordered the debt to be expunged, observing that this was a sale of the bill. So, if a party discounts bills with a banker, and receives, in part of the discount, other bills, but not indorsed by the banker, which bills turn out to be bad, the banker is not liable. 'Having taken them without indorsement,' says Lord Kenyon, 'he has taken the risk on himself. The bankers were the holders of the bills, and, by not indorsing them, have refused to pledge their credit to their validity; and the transferee must be taken to have received them on their own credit only.' So where, in the morning, A sold B a quantity of corn, and, at three o'clock in the afternoon of the same day, B delivered to A, in payment, certain promissory notes of the Bank of C, which had then stopped payment, but which circumstance was not at the time known to either party, Bayley, J., said—'If the notes had been given to A at the time when the corn was sold, he could have no remedy upon them against B. A might have insisted on payment in money, but, if he consented to receive the notes as money, they would have been taken by him at his peril.' Such seems the general rule governing the transfer by delivery, not only of ordinary Bills of Exchange and Promissory Notes, but also of Bank Notes. Nor is there any hardship in such a rule, for the remedy against the transferor may always be preserved by indorsement, or by special contract"

While it has always been acknowledged that the delivery of a

bill without indorsement, in exchange for a valuable consideration, is a sale of it, it has frequently been said that, if the bill be indorsed, it is only a loan. We have pointed out the ambiguity of the word *loan* already. It is often said that a banker lends his customer money on the security of bills. But this is an inaccurate mode of statement. What the banker does is to buy a debt due to his customer, and, when he indorses the bill, his customer gives him a limited warranty of its soundness. If the banker lent his customer the money, it would be his duty to repay it. But that is not so. It is the acceptor's business to pay the bill, and, if he does not do so, the banker may, by giving his customer immediate notice, and making a demand, make his customer take back the bill, and repay the money. But if the banker fail in giving immediate notice, his remedy against his customer is gone

16. But the *Law of Continuity* shews the fallacy of the doctrine that Bank Notes payable to bearer on demand alone are Currency. Lord Overstone rigorously restricts the term to such notes. But would not notes payable one minute after demand be Currency? or one hour? or two, or three, or four hours? Would not notes payable one day after demand be Currency? or two or three days? Lord Overstone denied that Bank post bills which are issued payable seven days after sight, are Currency. According to this doctrine, if a man deposits money in the Bank and receives in exchange for it a bank note payable on demand—that is Currency; but if he asks, for his own convenience, for a note payable seven days after sight—that is not Currency! But the note becomes payable on demand on the seventh day after sight, and then, by his own definition, it is Currency. What was it before? It used formerly to be the custom for banks in the country to issue notes payable 20 days after demand. These notes circulated and produced all the effects of money. What were they, if they were not Currency? Cheques are payable on demand. How are they not Currency as much as notes? How are Bills of Exchange not Currency on the day they become payable? And, if they are so then, what were they before? It is quite plain that there can be but one answer. They are all species of Currency, though differing in degree, and the distinction between them is untenable

Nay, according to this doctrine a Bank Note itself is only Currency during about six hours out of the twenty-four : because it is only payable *on demand* during banking hours, say from 9 a.m. to 3 p.m. As soon as the clock strikes three the Note is not payable till next day ; and, consequently, it is not Currency, and has ceased to affect the foreign exchanges. Therefore, at 5 minutes before three it is Currency, and 5 minutes after three it is not Currency. So at 5 minutes before nine a.m. it is not Currency, at 5 minutes after nine it is Currency. We must leave our readers to judge whether such doctrines are sound philosophy

Not only are Colonel Torrens's statements of law perfectly inaccurate, but also his statements of fact and the routine of business. He asserts that Bills of Exchange are not Currency because they are intended to be, and are, ultimately liquidated in coin or bank notes. Such a statement as this shews the most profound ignorance of the ordinary routine business of banking ; for comparatively very few bills are ever paid by means of coin or bank notes ; in modern times they are almost universally paid by means of Bank Credits : and, consequently, by Colonel Torrens's own definition, these Bank Credits must be money

17. But we must point out the further conclusions which the doctrines set forth by these witnesses lead to, which may somewhat surprise their advocates

They say that the fundamental essence of Currency or Money is that it " closes a debt "

Now to this we shall reply as was the fashion in the glorious old days of special pleading—(1) there is no debt to close ; and (2) it does *not* close the debt

1. When money is exchanged for goods no debt arises : and if it be said that the money closes the debt which would have arisen on the sale of the goods, it is perfectly obvious that it may equally be said that the goods close the debt which would have arisen on the sale of the money. It is simply an exchange ; and the goods and the money close the debt equally on each side. Therefore, if it be the essence of Currency to " close debt," the goods are Currency for precisely the same reason that the money is

It is quite common in the City to discharge a debt by stock :

now by this the debt is closed, and, consequently, according to this doctrine, the Stock is Currency or Money

So in innumerable cases it is the custom to discharge a debt by a payment of goods. A baker or a tea merchant becomes indebted to a wine merchant, and for the sake of convenience he may take payment in bread or tea. If he does so, then the debt is closed; and by this doctrine the bread or the tea are Currency or Money

So in all cases of Barter or Exchange of goods, the goods on each side discharge or close the debt which would have arisen without the exchange; consequently, the goods exchanged on either side are equally Currency or Money

Furthermore, let us test the doctrine by cases regarding other paper documents

A merchant, suppose, puts his acceptance into circulation: another person happens to be indebted to him in an equal amount, and chances to come possessed of his acceptance. The merchant asks for payment of his debt, and the debtor hands over to the merchant his own acceptance. By this means the debt is closed; and according to this doctrine the merchant's acceptance is Currency or Money

So a banker, say, issues notes, and discounts a merchant's acceptance. When the acceptance falls due, the merchant collects an equal amount of the banker's notes. Each is then equally indebted to the other; and in payment of their reciprocal claims, the merchant hands the notes to the banker, and the banker hands the acceptance to the merchant. By this means the debts are mutually closed, and if the Notes are Currency because they have closed the debt, is it not manifest that the acceptance is equally Currency, because it has performed exactly the same function?

So if two merchants issue their acceptances for the same amount, and they get into each other's hands, each will offer to the other his own acceptance in payment of the debt by him. By these means the debts are mutually closed. And consequently each acceptance is Currency or Money

Thus we see that the dogmas of these writers are transfixed by darts drawn from their own quiver!

The same doctrine may be extended to other cases. Suppose

a man buys a ticket from a Railway Company, the Company is then indebted to him. But when they have carried him to his journey's end, the debt is closed. Therefore, according to this doctrine, the carriage of the passenger is Currency or Money

So if a person buys an opera ticket, the manager of the theatre is indebted to him. But when he has witnessed the play, the debt is closed; consequently the performance of the play is Currency or Money

So if a person buys Postage Stamps, the Post Office is indebted to him: but when he has sent his letters by post, the debt is closed. Therefore the carriage of the letters is Currency or Money. And so on, the same principle may be applied to many other cases

2. In the next place, we affirm that a payment in Money does *not* close the debt, because all Economists have shewn that the transaction is *not* closed until some product or satisfaction has been obtained in exchange for the one originally given. The earliest Economists pointed out that in a sale for money the exchange is *not* consummated

A baker, we will say, wants shoes: he sells his bread for money; but can he wear his money as shoes. Certainly not; he must exchange away his money for shoes. Consequently, the Physiocrates held that the exchange was not consummated, or completed, until the baker had got his shoes. And J. B. Say called a sale a demi-exchange

And it is precisely for this reason that all Economists from Artistotle downwards, have perceived and declared that money itself is only a species of Credit, or general Bill of Exchange, as we have shewn by a whole catena of writers. Hence, money and bills of exchange are fundamentally analogous; they are each of them merely the evidence of a debt due to their possessor; and the payment of a bill of exchange in money is only the exchange of a particular and precarious instrument of Credit for a general and permanent one. But, as Economists, we have nothing to do with satisfaction and enjoyment; we have only to do with *exchanges;* and the exchange of goods for a bill or note is one exchange; the exchange of a bill or note for money is another exchange; and the exchange of money for goods is another

exchange; they are all equally exchanges, and therefore Economic phenomena

18. We are happy to say that on this subject M. Michel Chevalier is entirely of the same opinion as ourselves. After showing* the untenable nature of the distinction set up between Bank Notes and Bills of Exchange, he says—"The English language has a generic word which comprehends money, bank notes, paper money, or assignats not convertible into specie, and every other kind of security which can be put into circulation, and is accepted more or less generally among men: and that is the word **Currency.** Our language has no precise equivalent: nevertheless, the word *Numéraire* may be taken in the same sense, and I shall employ it for the future in this work." And the same distinguished writer has given his formal adhesion to the fundamental nature of a Currency set forth in this work †

But, while we contend that Lord Overstone's criterion of a Currency is fatal to his own view, we are quite willing to accept it. For what is it that exists in all places, in all times, and among almost all persons? **Debt,** or **Services due.** And what is it that is universally required to measure, record, and transfer them. *Some material.* But we see that all Currencies are more or less local, none are universal. The idea, or the want alone, is universal. The notes of a country banker, only circulating in his own neighbourhood, are like a country *patois,* each district has its own. A national Currency rises to the dignity of a language. But even that is only local, on a larger scale. The ideas only expressed in the language are universal. We are, therefore, strengthened in our conviction, that the only true idea of a Currency is that it is the *Representative of Transferable Debt,* and that *whatever represents Transferable Debt is Currency*

* *La Monnaie,* § 3, *ch.* 5. † *Journal des Economistes, August,* 1862.

CHAPTER XVI

ON THE ORGANISATION OF THE BANK OF ENGLAND;

AND ON THE BANK CHARTER ACT OF 1844

1. We are now, at length, in a position to take a comprehensive survey of the organisation of the Bank of England, and of the Bank Act of 1844. Of all the Acts in the Statute Book there is none which comes home to every man, which so nearly affects every man's interest, as this Act. Few persons are aware of its extremely complicated nature. We hear, sometimes, of *the principle* of the Act of 1844, as if there were but one principle involved it! or as if the *object* of it were the same thing as the *principle*: the object it aims at, the same thing as the theory it adopts to obtain that object. Whereas, in truth, it is founded upon a multiplicity of theories—it is a combination of several theories of Currency, and, moreover, devises a particular machinery for carrying them out. When, therefore, we consider its very complicated nature, we see what a boundless field of controversy it may give rise to; for each of the several theories it embodies may be partially or totally erroneous; and even if they be correct, the machinery devised for enforcing them may be imperfect, or erroneous, and insufficient for its purpose. We think, however, that we are now in a position to examine the theories upon which it is founded—to test them by the fundamental principles of monetary science established in the preceding chapters, and to point out those principles—if any—which it violates

In the first chapter we obtained the great fundamental conception, which is the basis of monetary science, that money is the representative of debt, or services due—**That where there is no Debt, there can be no Money.** In the pre-

ceding chapter we found that the fundamental error of Law's Theory of Paper Money is, that it creates Currency where there is no Debt for it to represent. The consequence of which is, that an additional quantity of material is poured into the channel of circulation, as it is called; that is, a greater quantity of material is required to do exactly the same duty as a smaller quantity did before; the consequence of which is a depreciation of the whole, which may proceed to any length; and we have given several examples of the practical results of this plausible and wide-spread but delusive theory

We must now examine the organisation of the Bank of England, and we shall find that it, too, is based upon Lawism

But furthermore, we have said that the Bank Act of 1844 is based on a peculiar definition of the word **Currency**; and is expressly devised for the purpose of carrying into effect a peculiar Theory of Currency. In the last chapter we have examined the meaning of the word **Currency**, and shown the entirely erroneous doctrines of those writers from whom the scheme emanated which was embodied in that Act. We have now to examine the **Theory** upon which it is founded; and to see how far it really carries out the **Theory** it is intended to do; and the consequences it has produced

2. The Bank was a corporation who advanced £1,200,000 in cash to Government. In exchange for this they received an equal amount of Government stock, with interest at 8 per cent., or an annuity of £100,000 a year

Now, when they had received this annuity, they had already received an equivalent for their cash. But, *in addition* to that they were allowed to *create* an amount of notes equal to their capital to trade with, and it was supposed that the annuity of £100,000 in cash was sufficient to support the credit of these notes

Now, we at once perceive the essential distinction between the Banks of Venice, Amsterdam, and Hamburg, and the Bank of England. The former banks were examples of the **Currency Principle.** The bullion paid into them was kept, or was professed to be kept, in their vaults, and, as long as it was so, the credit created by them was exactly equal to the bullion paid in. Their function was solely to exchange Credit for Bullion and Bullion

for Credit. Hence these banks created no augmentation of the Currency

But the case of the Bank of England was manifestly wholly different. The Bank paid over the money to Government, who put it into circulation. The Bank received the annuity, and was *also* permitted to create £1,200,000 in Bank notes, and trade with them, by discounting bills of exchange, or otherwise. Thus the Bank had not only sold its cash to Government, but it was also allowed to have it as well in the form of notes, to trade with, and make a profit by

3. Now, can any one fail to see that this proceeding *augmented* the Currency by the amount of £1,200,000, and that the Bank made a double profit; first, the interest on the cash paid to the Government, and, secondly, the commercial profit made by trading with the notes?

Therefore, so far as this went, this was clearly an example of **Lawism**

4. In 1697 the Bank was authorised to increase its capital by upwards of a million. Of this sum, above £800,000 was received in Exchequer tallies, then at a discount of 50 per cent., and £200,000 in its own notes, then at a discount of 20 per cent. Both the tallies and the Bank notes were counted as specie at their full nominal value; and upon this augmented capital of tallies and notes they were permitted to *create* an equal amount of new notes to trade with!

Law only proposed to issue paper money based upon the security of land, or some other solid article of value. But the Bank of England was permitted to create paper currency based upon the security of its own depreciated credit!

In 1709 the Bank was allowed to double its capital, and to *create* an equal amount of notes to trade with

Now, is it not as clear as the sun at noon day, that each of these issues of notes was so much increase of Currency, and an example of Lawism

5. Now, if the same *principle* had been carried out to the present time, is it not clear that all the public funds would have

been Bank stock, and that the Bank notes would have equalled the amount of the National Debt, or about £800,000,000 ? Some persons, even now, seem to think that this is a good principle. They seem to think that if they carry Stock to the Bank, they have a right to have it coined into notes to any amount. It is clear that this principle could never be carried out to its full extent. For, if it were true, Government might go on creating public debt *ad infinitum*, and then the Bank would create an equal amount of notes. If this principle be true, what would be the use of going to California and Australia for gold ? Is not this *principle* more mad than anything Law ever wrote ? Law's issues of paper were *limited* by the value of the land, but this plan has positively *no* limits whatsoever

6. Up to 1711 the issues of the Bank were strictly limited to the amount of their capital ; and it was declared that if the Directors exceeded that limit they should be liable in their personal capacity. Afterwards they were released from this limitation, and they were allowed to issue notes to any extent they pleased, provided always that they were payable in specie on demand

And so the Bank went on till 1797, when it stopped payment, and committees were appointed by Parliament to investigate its affairs, who reported it to be in the most solid and flourishing condition, and that they had a surplus of assets above liabilities of nearly four millions, besides the Government debt, amounting to £11,686,800

The reason of this was plain. The notes it had issued were given in exchange for mercantile securities, and, therefore, the Bank had as security for the payment of its notes, both the commercial bills and the Government debt

This no doubt amply secured the solvency of the Bank and the payment of its notes, but it played utter havoc with the **Currency Principle**

7. The Bank possessed the power of unlimited issue till 1844. On several occasions it had been most recklessly mismanaged. Proposals had been made to limit its powers of issue ; but such a plan had been expressly condemned in the Bullion Report, and among numerous other authorities, by Sir Robert Peel in 1819,

in 1826, and in 1833. In 1824 and 1825, in 1837, and 1839 an immense outflow of bullion took place, without the Bank taking any means to stop it. The consequence was that it was brought to the very verge of stopping payment

8. We have seen that all Banking consists in creating and issuing Rights of action, Credit, or Debts, in exchange for Money, or Debts. When the Banker had created this Liability in his books, the customer might, if he pleased, have this Credit in the form of the Banker's notes. London bankers continued to give their notes till about the year 1793, when they discontinued this practice, and their customers could only transfer their Rights, or Credit, by means of cheques. But it is perfectly manifest that the Liabilities of the Bank are exactly the same whether they give their own notes or merely create a Deposit

Soon after the renewal of the Charter, in 1833, certain writers of influence adopted the Currency principle. They maintained the doctrine that bank notes, payable to bearer on demand only, are Currency—to the absolute exclusion of all other forms of paper Credit—and that when bank notes are permitted to be issued, they ought to be exactly equal in quantity to the Bullion they displace, which we have shewn elsewhere* is a doctrine invented in China, and was the principle upon which the Banks of Venice, Amsterdam, Hamburg, and others were constructed. They maintained that all Paper Currency created in excess of this is a depreciation of the Currency

These doctrines being maintained by persons of eminence and influence, and aided by the incorrigible mismanagement of the Bank of England, converted Sir Robert Peel, who now entered upon the **third** state of his opinions upon the Currency question. It is frequently supposed that Sir Robert Peel had only *two* states of opinion upon the Currency question. But this is quite a mistake. In 1811 he repudiated the doctrines of Horner and the Bullion Report, and voted in the majority that 21 was equal to 27. In 1819 he became a convert to the doctrines which he had repudiated in 1811: and he expressly repudiated the doctrine of the Currency principle, and the principle of imposing a numerical limit on the issues of the Bank; which

* *Principles of Economical Philosophy*, *ch.* 18.

doctrine he held up to 1833. In 1844 he had completely repudiated the doctrines of the Bullion Report, Mr. Horner, and his own of 1819, and formally adopted those of Lord Overstone, Colonel Torrens, and others, which maintained the doctrine of the Currency principle: and, naturally and justifiably irritated by the incorrigible misconduct of the Directors, he determined to impose a *numerical* limit on the issues of the Bank—,

> "Sic volvenda ætas commutat tempora rerum;
> Quod fuit in pretio, fit nullo denique honore,
> Porro aliud succedit, et e contemptibus exit,
> Inque dies magis appetitur, floretque repertum
> Laudibus, et miro'st mortaleis inter honore."

In order to carry out this principle the Bank was divided into two departments—an Issue department and a Banking department. The Bank was to transfer to the issue department public securities to the value of £14,000,000, of which the original Government debt was to be a part, and also so much of the gold coin and gold and silver bullion as should not be required for the banking department. The issue department was then to deliver over to the banking department an amount of notes exactly equal to the securities, coin, and bullion so deposited with them. The Bank might diminish the securities as much as it pleased, cancelling the notes; and might increase them again, but not so as to exceed the preceding limit. In consequence of the lapsed issues of other banks, the securities upon which it may issue notes are now £15,000,000

Thus the amount of notes issued by the Bank is strictly limited to £15,000,000 plus the amount of bullion held by the issue department

9. It was supposed that these provisions secured that the quantity of notes in circulation, *i.e., in the hands of the public*, would be exactly equal in amount to what a Metallic Currency would have been, and that the outflow of bullion would, by its own natural operation, withdraw notes in circulation to an equal amount. Having made these provisions, the framers of the Act supposed that they had taken out of the hands of the Bank all power of mismanaging the currency, and that they might manage the banking department entirely at their own discretion

To say that the amount of Notes should only be equal in

amount to what a metallic Currency would have been, is a very intelligible proposition, and, as we have before observed, several banks had been conducted on that principle, such as those of Venice, Amsterdam and Hamburg, *but no Bank conducted on this principle ever did, or by any possibility could do, banking business.* Those banks were pure banks of deposit, they did no discount business whatever; and if the Bank of England were forbidden to discount, there is no reason why it should not be reconstructed on this principle

But if the framers of the Act of 1844 really believed that this Act carried out this theory into practice, no set of men ever committed a more manifest error. It is quite evident that the £15,000,000 of notes issued against public debt and securities are in direct violation of the "Currency Principle." How did the Bank obtain these securities? By purchase. Now, the purchase-money of these securities is in circulation, and the notes created on their security *as well.* Is it not clear that these 15 millions of notes are an *augmentation* of currency to that amount? If it be true that these 15 millions of notes are not a violation of the Currency Principle, then the very same argument would shew that the whole National Debt might be coined into notes, and then there would be no more paper in circulation than under a pure metallic currency!!

It is quite clear that this is pure and simple **Lawism;** and, if we may coin the funds into money, we may just as well coin the land into money: and then, where should we be?

10. Certainly, it is an excellent plan for every one to buy the funds with their cash, and then to be allowed to have it, too, in the form of notes. At all events, so long as this is permitted, let no one laugh at John Law

But even this does not shew the full extent of the error of those who think that the Bank Act of 1844 enforces the Currency Principle. The banking department of the Bank does business like any other bank. That is, it purchases or discounts bills of exchange in the first instance, by creating Credit in its books; that is, it increases its liabilities in another form besides notes. This Credit is equally in excess of the Metallic Currency. The reserve of notes and gold being the basis of the Bank's power of

creating credit, of course they must use their own judgment as to how far they may safely extend this, just as every other banker does. But any one who examines the Bank's returns will perceive that its liabilities payable on demand considerably exceed its notes in reserve and gold

Therefore, it is quite clear that those who seriously maintain that the Bank Act really carries out the "Currency Principle," must maintain this proposition—

Twice 15 millions + an indefinite number of millions } = 15 millions

It has been shewn that in Banks constructed on the "Currency Principle," the Credit created is always exactly equal in quantity to the money deposited and kept in the Bank. But how does this matter stand with the Bank of England? Let us test this principle by any one of its published returns taken at random. On the 3rd October, 1884, it appears that the Credit created by the Bank amounted to £55,928,398, and the specie held by the Bank amounted to £21,799,392, or about 2·6 to 1. If, therefore, it be maintained that the Bank is constructed on the "Currency Principle," it must also be maintained that 2·6 are equal to 1

As a matter of pure arithmetic, therefore, it is perfectly manifest that the Bank Act completely fails to carry out the "Principle" it was intended to enforce. In fact, the framers of the Bank Act had a **Theory**, and they passed an Act; but they never took the slightest pains to ascertain whether the Act corresponds with the Theory

11. Now, we say nothing here as to the correctness, or the contrary, of the "Currency Principle," or as to the expediency of carrying it out; but to suppose that the Bank Act does really carry it out is simply one of the most astonishing delusions that ever deceived the public mind. Truly, says Bastiat—

"Etre dupe d'autrui n'est pas déjà très plaisant; mais employer le vaste appareil représentatif à se duper soi-même, à se duper doublement, et, *dans une affaire de numération*, voilà qui est bien propre à rabattre une peu l'orgueil du siècle des lumières"

Every "banker" whatever, who discounts a bill of exchange, violates the "Currency Principle." There is no mode whatever

of carrying out the Currency Principle but by abolishing discount banking altogether; as we have already observed, the banks constructed on this principle did no discount business

12. Lord Overstone, in his evidence before the Committee of the House of Commons, said that it was a fundamental vice of the principle devised by the Directors in 1832, to carry out the doctrines of the Bullion Report, that the gold might all leave the country without causing any diminution of the amount of Notes in the hands of the public: and we have seen that this assertion was completely verified in 1839

It was, therefore, expressly declared that it was the purpose of the Act that, if any drain should arise after it came into operation, an exact amount of notes should be withdrawn from the hands of the *public*, or from circulation. Having secured that object, as they imagined, they left the Directors free and uncontrolled in their banking business. For the first two years after the Act was passed no occasion occurred to test its merits; it was a period of unusual prosperity and accumulation of capital. But when the first season of real trial came, in the beginning of 1847, we have seen that the Act wholly failed in its intended effect of causing a withdrawal of notes in circulation, in proportion to the outflow of bullion. The Directors pursued exactly the same fatal course as they had done on so many former occasions, and the result was the pressure of April. It was manifestly proved, therefore, that the Act provided no effectual check against mismanagement on the part of the Bank

And whence did this failure arise? From this very simple circumstance. The framers of the Act supposed that there is only **one** way of extracting gold from the Bank: namely, by means of its notes: and that if people want gold they must bring in notes; and, consequently, as the gold comes out the notes must go in

But, as a matter of simple banking business, there are **two** methods of extracting gold from the Bank—namely, by Notes and by **Cheques.** Whoever has a Credit in its books may go and present a **Cheque,** and thus draw out gold from the banking department without a single Bank Note being withdrawn from the public

In fact, instead of withdrawing the Notes from the public, as the framers of the Act intended, the Directors threw the whole effect of the drain of gold on their own reserves. And that happened in this way. The public has **two** methods of drawing gold from the banking department, namely, by **Notes** and **Cheques**; but the banking department has only **one** method of drawing gold from the issue department, namely, its Notes in reserve. And when the bank felt a drain on its banking department for gold, it had to replenish it by obtaining a fresh supply from the issue department; at the same time giving up an exactly equal amount of Notes. And thus the whole drain fell on its own reserves

No legislation can prevent this power of extracting gold from the Bank by means of Cheques, except prohibiting Cheques altogether. And thus is explained the complete failure of the "Mechanical" action of the Act to compel the Directors to carry out the "Currency Principle." The Directors were able to commit, and actually did commit, the very same error, as they had done before the Act—which Lord Overstone had truly said was the fundamental vice of the Bank principle of 1832—and it was powerless to prevent them

And this simple fact completely upsets the whole theory of the Act

There are, in reality, *two* leaks to the ship. The framers of the Act could only perceive *one;* and they only provided against one: and they were utterly astonished to find the ship rapidly sinking from the *other* leak, which they had forgotten

13. Now, as the Act notoriously and manifestly failed on this most important point, which was fully and candidly admitted by Sir Robert Peel, it becomes a natural inquiry to ask why it failed on this point, which it was supposed had been rendered so secure. We reply to this that the Act failed because it *aimed at the wrong mark altogether. It wholly missed the true point in the case*

In former times it was a mercantile dogma that the Exchanges could only be against the country in consequence of its being indebted to other countries. Nothing can be more stirking than the vicious circle in which the commercial witnesses argued before

he Bullion Committee of 1810. They maintained with unflinching perseverance that the Exchanges could only be adverse, ›ecause the country was indebted: and as the Exchanges were dverse, they maintained that the country *must* be indebted without the slightest inquiry into the fact) *because* the Exchanges ere adverse

However, the Bullion Committee completely disproved this ommercial dogma; and they demonstrated beyond dispute, that he depreciated paper currency was the cause of the Exchanges eing *apparently* adverse; but that when this depreciated paper urrency was reduced to its true value in gold, the Exchanges ere in reality in *favour* of the country

The Commercial witnesses maintained that when the indebtedess was paid off, the drain of buillion would cease of itself. But he Bullion Committee proved that with a paper currency so epreciated as Bank Notes then were, the drain would not cease ntil *all* the specie in circulation had left the country, which was mply verified

The Bullion Committee thus shewed that there are *two* causes f a drain of bullion—1st, the indebtedness of the country; 2nd, depreciated paper currency

But in the first edition of this Work published in 1856, we hewed that there is a **Third** cause of a drain of bullion, and an dverse exchange, which, however it might be known among commercial men, had never yet, that we have seen, found its way into ny commercial book whatever, and most certainly had never een brought forward prominently before the public in Currency iscussions, as a cause of an adverse Exchange, wholly irrespective f any indebtedness of the country, or of the state of the Paper urrency

The Principle is this—

That when the Rate of Discount between any two places differs y more than sufficient to pay the cost of transmitting Bullion from ne place to the other, Bullion will flow from where Discount is ower to where it is higher

The old mercantile dogma was that Bills of Exchange can nly be created to represent debts arising from the sale of merhandise: and if there are no debts, there will be no bills created: nd that when all the bills are paid, no more bullion will go

But, suppose (the state of Credit at both places being assumed to be equally secure) that the Rate of Discount at London was 2 per cent., while the Rate at Paris was 8 per cent., we shewed that bullion dealers would *fabricate* bills—not based upon any previous debt, or any mercantile transactions whatever—but simply for the sake of being discounted ; that is, for the purpose of buying gold in London at 2 per cent., and selling it in Paris at 8 per cent., and this operation will infallibly go on, and the drain of bullion will not cease, until the Rates of Discount are so nearly equalised as to destroy the profits to be made by fabricating bills. Hence, if such a state of things, as is just supposed, arises, the Bank must, as an indispensable measure to preserve its own security, raise its Rate of Discount so as to destroy these profits, and so arrest the drain which is exclusively caused by the difference of the Rates in the two places

Now, this practice causes no increase of Bank Notes in circulation ; on the contrary, they are not wanted : it is *gold* that is demanded and taken for export, and it steals out of the country noiselessly and unobserved. Also, if bankers in this country will perversely maintain the Rate of Discount lower here than in neighbouring countries, and, therefore, lower than the natural rate, persons in foreign countries send their debts and securities over here for sale, and the proceeds are remitted abroad. Consequently this practice causes an export of gold without diminishing the notes in circulation. Of all species of property, Debts are the most easily transportable. The charges even on the transmission of gold are heavy compared to those on the transmission of Debts. Debts to any amount can be transmitted from one country to another at the mere expense of the postage. Consequently, if the Americans can only get £85 per cent. for their debts in their own country, and they can get £96 per cent. in England, of course they will send them here in vast quantities for realisation. This was eminently and notoriously the case in 1839, when the Bank of England kept its rate so perversely below the natural rate, and it was the cause that aggravated the drain of bullion to so alarming an extent. Hence we have shewn that beyond the causes universally known for an export of specie, namely, payments of genuine Debts, there is another and most potent cause, whose importance has only recently been sufficiently recognised—

namely, an unnatural depression of the Rate of Discount, below that of neighbouring countries

Now, this principle was certainly not generally understood at the time the Bank Act of 1844 was passed; and in the first edition of this Work (1856) we stated this as a fundamental principle of the Currency—

"An Improperly Low Rate of Discount is, in its Practical Effects, a Depreciation of the Currency"

We therefore shewed that the only true method of striking at this demand for gold is by raising the **Rate of Discount,** and that the true great power of governing and controlling the Paper Currency, or Credit, is by carefully **adjusting the Rate of Discount to the state of the Foreign Exchanges, and the state of the Bullion in the Bank**

Now, the weak point in the Act of 1844, is that it takes no notice of this grand principle, it takes no precaution that the Directors of the Bank of England shall recognise it, and counteract it. On the contrary, it leaves them in full power to repeat their oft-committed error of causing a depreciation of the Currency from an unnaturally low rate of discount

This principle was extremely ill understood in 1856, when our work was published, and was very unpopular; but its truth was soon signally verified, and acknowledged to be true by the most competent authorities. After the great crisis of 1857, a Committee of the House of Commons was appointed to investigate its causes, and Mr. G. W. Norman, a Director of the Bank of England, and one of the most prominent and distinguished advocates of the "Currency Principle," and of the Bank Act of 1844, was asked—Q. 3529. "Is it not principally by raising the rate of interest that you check the amount of discount which may be demanded of you?—Yes; we have found, *contrary to what would have been anticipated*, that the power we possess, and which we exercise, of raising the Rate of Discount, keeps the demand upon us within manageable dimensions. There are other restrictions which are less important. *The rate we charge for our discounts, we find, in general, is a sufficient check*"

In 1861, Mr. Goschen published his *Theory of the Foreign Exchanges;* in it he says—

"The efficacy of that corrective of an unfavourable state of the Exchanges, on which we have been dilating (*i.e.*, raising the rate of discount), has been most thoroughly tested by late events. Every advance in the Bank rate of discount has been followed by a turn of the Exchanges in favour of England, and *vice versâ*, as soon as the rate of interest was lowered, the Exchanges became less favourable."

This is now the acknowledged principle upon which the Bank of England is managed; and after our work was published, in 1856, the Usury Laws in France were modified in order to enable the Bank of France to adopt it, and, in fact, it is now universally adopted by every bank in the world

In former times, when the only communication between different countries was by means of sailing ships and common roads, and therefore very slow, expensive, and uncertain, this principle, though actually true, could seldom be called into action, because the cost and delay of the transport of gold would far exceed any profit to be made in the difference of the Rates of Discount in quiet times. It was like some mechanical force, which actually exists, but which is overpowered and prevented from producing any visible effect, in consequence of friction. But it did act in times of commercial crisis, when the rate became extreme. In 1799, enormous failures took place in Hamburg; discount rose to 15 per cent., and this rate immediately drew away gold from England

But in modern times, since communications have been so much accelerated and cheapened, even since the Act of 1844, by means of railroads and steamers, this friction, as we may call it, has been immensely diminished; and this great principle is called into action with a much less difference between the Rates of Discount than at any former period. Bullion would probably take ten days, formerly, to go from London to Paris; it can now go in ten hours, and at probably the tenth part of the expense. A difference of 2 per cent. between the rates of discount in London and Paris, will now draw bullion from one place to the other

On the Causes which compelled the Suspension of the Bank Act in 1847, 1857, *and* 1866

14. The monetary pressure which we have been considering passed away for the time, but another, much more severe, came on in the autumn, which ended in a monetary panic, and on the 25th November, 1847, the Government authorised the Bank to exceed the limits allowed by the Act of 1844, if they considered it necessary so to do to restore commercial confidence. This suspension of the Act was perfectly successful; and on two similar occasions, in 1857 and in 1866, a similar course was followed with similar results. We have given a full narrative of the course of events preceding these panics in a preceding chapter. We must now only examine the reasons which made this course necessary, and why it was successful

Ever since the enormous development of the Credit system of commerce in modern times, great commercial failures have periodically recurred, producing the most wide-spread distress; and there have been two conflicting Theories as to what the action of the Bank ought to be in a Monetary Crisis

1. One Theory maintains that in such a Crisis the Bank should liberally *expand* its issues, to support Commercial Credit. This Theory may be called the **Expansive** Theory

2. The other Theory maintains that in such a Crisis the Bank should rigorously restrict its issues to their usual amount, or even contract them. This Theory may be called the **Restrictive** theory

Both these Theories have been tried in practice, and discussed by the most eminent authorities, and we may succinctly examine the results

The first great monetary crisis in modern times took place in 1763, after the termination of the seven years' war. This great disaster occurred at Hamburg and Amsterdam, where the "Currency Principle" was in full operation, and there was no Banking Credit whatever, except what represented specie. The failures began at Amsterdam, among the principal merchants. The Bank had no power to assist them; and the resources of the private bankers were exhausted. Hearing that the Amsterdam bankers

had determined to allow the merchants to fail, the Hamburg bankers wrote to them in the greatest alarm to say that if they did not support the merchants, they would instantly suspend their own payments. But by the time the letter reached Amsterdam, the merchants had already stopped. General failure followed at Hamburg, where no business was for some time transacted but for ready money. The failures were equally general throughout Germany. The Crisis extended to England, and Smith says that the Bank made advances to merchants to the amount of a million

Thus we see that the "Currency Principle" was no protection whatever against a Monetary Crisis; and on this occasion the Bank acted on the **Expansive** Theory

In 1772 the most severe Monetary Crisis in England since the South Sea Scheme took place. On this occasion, again, the Bank came forward to support Commercial Credit

In 1782 our unhappy war with America was ended; and the usual results of the termination of a great contest took place. The Bank had greatly extended its issues; and a very alarming drain of specie took place, which at one time threatened to compel them to stop payment. The Directors, however, considered that if they could only restrain their issues for a short period, the returns in specie in payment of the exports would soon set in in a more rapid manner than they went out. They determined, therefore, to make no communication to the Government, *but, for the present, to contract their issues* **until the Exchanges turned in their favour.** The Bank felt the greatest alarm in May, 1783. They then refused to make any advances to the Government on the loan of that year; but they did not make any demand for payment of their other advances, which were between nine and ten millions. They continued this policy up to October, when at length the drain had ceased from the country, and money had begun to flow in from abroad. At length, in the autumn, when the favourable signs began to appear, they advanced freely to Government on the loan, although at that time the cash in the Bank was actually lower than at the time they felt the greatest alarm. It was then reduced to £473,000

The doctrine then stated by Mr. Bosanquet that guided the Directors was this—That while a drain of specie was going on,

their issues should be *contracted* as much as possible; but, that as soon as the tide began to give signs of ceasing, and turning the other way, it was then safe to extend their issues freely. This policy had been entirely successful, and the credit of the Bank was saved

15. After the peace of 1782, the commercial energies of the country were greatly developed: to carry on this increased commerce a greatly enlarged currency was necessary; and as the monopoly of the Bank prevented solid banks being founded, innumerable tradesmen started up in every part of the country issuing notes. Burke says, that when he came to England, in 1750, there were not twelve bankers out of London; in 1792 there were about 400: the great majority being grocers, tailors, drapers, and petty shop-keepers. In the autumn of 1792 very numerous failures took place in Europe and America. In January, 1793, the general alarm was greatly increased by the rapid progress of the French Revolution. Some great failures occurred in London in February: and soon the panic spread to the banks. Of these 100 stopped payment, and 200 were much shaken. The pressure in London was intense; and this naturally produced a demand on the Bank for support and discounts. But the Bank being thoroughly alarmed, resolved to contract its issues: bankruptcies multiplied with frightful rapidity. The Government urged the Bank to come forward to support Credit, but they resolutely declined

In the meantime the most alarming news came from Scotland. The public banks were quite unable, with due regard to their own safety, to support the private bankers and commerce. Unless they received immediate assistance from Government, general failure would ensue. When universal failure seemed imminent, Sir John Sinclair remembered the precedent of 1697, when the public distress was allayed by an issue of Exchequer bills. A Committee of the House of Commons was appointed, who reported that the sudden discredit of so large an amount of bankers' notes had produced a most inconvenient deficiency in the circulating medium; and that unless a circulating medium was provided, a general stoppage must take place. They recommended that Exchequer bills to the amount of £5,000,000 should be issued under

the direction of a Board of Commissioners appointed for the purpose, in sums of £100, £50, and £20

No sooner was the Act passed than the Committee set to work. A large sum, £70,000, was at once sent down to Manchester and Glasgow, on the strength of the Exchequer bills, which were not yet issued. This unexpected supply, coming so much earlier than was expected, operated like magic, and had a greater effect in restoring credit than ten times the sum could have had at a later period

When the whole business was concluded, a report was presented to the Treasury. It stated that the knowledge that loans might be had, operated, in many instances, to prevent them being required. The applications granted were 238, and the sum advanced was £3,855,624. The whole sum advanced was repaid; two, only, of the parties assisted became bankrupt; all the others were ultimately solvent, and in many instances possessed of great property. A considerable part of the sum was repaid before it was due, and all the rest with the utmost punctuality. After all expenses were paid, the transaction left a clear profit to the Government of £4,348

Contemporary writers all bear witness to the extraordinary effects produced. Macpherson says, that the very intimation of the intention of the Legislature to support the merchants operated like a charm over the whole country, and in a great degree superseded the necessity of relief by an almost instantaneous restoration of confidence. Sir Francis Baring concurs in this view, and adduces the remarkable success of the measure as an argument to shew the mistaken policy of the Bank. After careful deliberation the Bullion Report warmly approved of it; censured the proceedings of the Bank; and especially cite it as an illustration of the principle they laid down, that an enlarged accommodation is the true remedy for that occasional failure of confidence to which our system of Paper Credit is unavoidably exposed

This occasion, therefore, is a most important example of the beneficial effects of the **Expansive** Theory in a monetary panic

16. Towards the end of 1794 the exchanges began to fall rapidly, and in May, 1795, were so low that it was profitable to

export bullion. While, however, the exchanges were so adverse, the issues of the Bank were immensely extended, from circumstances which are too long to state at length here, but which we have given already,* and which there is no necessity to detail, because the simple fact is enough that the issue of Bank Notes was greatly increased while gold was rapidly leaving the country. The Directors now became seriously alarmed for the safety of the Bank, and took the most rigorous measures to contract their issues. In April, 1796, the exchanges became favourable, and they continued to be so till February, 1797

The excessive contraction of its issues by the Bank caused the greatest inconvenience to commerce, and a meeting of bankers and merchants was held to devise some means of relief. The failures among the country bankers, in 1793, had caused an immense diminution in the country issues, and Thornton says that in the last three months of 1796 the issues of the Bank were no higher than they had been in 1782, with an amount of commerce many times larger than in that year. As the public could not get Notes, they made a steady and continuous demand for guineas; and, *although the exchanges were favourable to the country, and gold was coming in from abroad,* there was a severe drain on the Bank for gold. Political circumstances added to the alarm, and, about the middle of February, a stoppage of country banks became general. The panic reached London, and a general run began upon the bankers. Before this the Directors had used the most violent efforts to contract their issues. In five weeks they had reduced them by nearly £2,000,000. On the 21st January they were £10,550,830, on the 21st February they were £8,640,250. But even this gave no true idea of the curtailment of mercantile accommodation; for the private bankers were obliged, for their own security, to follow the example of the Bank. In order to meet their payments persons were obliged to sell their stock of all descriptions at an enormous sacrifice. The three per cents. fell to 51 !

On Saturday, the 25th February, 1797, the specie in the Bank was reduced to £1,272,000, with the drain becoming severer every hour. The Directors now felt that they could hold out no longer : and on Sunday a Cabinet Council was held, and an order

* *Vol. I., p.* 519.

in Council issued, directing the Bank to suspend payments in cash until the sense of Parliament could be taken on the subject. Accordingly, on Monday, the 27th, the cash being then reduced to £1,086,170, the Bank suspended payments in cash, and did not resume them partially till 1816, and completely till 1821

But immediately this was done, they enlarged their accommodation liberally; within a week they increased their issues by two millions, and the relief was very great. A meeting of 4,000 merchants and bankers agreed to support the credit of the Notes

The most eminent authorities afterwards severely censured the management of the Bank. Thornton said that the excessive contraction of Notes had shaken public credit of all descriptions, and had caused an unusually severe demand for guineas; that the Bank ought to have extended its issues to supply the place of the country Notes which were discredited. Boyd was clearly of opinion that the excessive restriction of Notes was the chief cause of the forced sale and depreciation of the public securities. In 1810 the Governor of the Bank said, that after the experience of the policy of restriction, many of the Directors repented of the measure: and the Bullion Committee explicitly condemned the policy of the Bank both in 1793 and 1797

Nothing, in short, could be more unhappy than their regulation of their issues. When the exchanges were violently adverse, so that it was very profitable to export gold, they enlarged them to an extravagant extent: and when the exchanges were extremely favourable, so that gold was flowing in, they contracted them with merciless severity. The issues, which were £14,000,000 when the exchanges were against the country, were reduced to £8,640,250 when they had been for several months eminently favourable. The entire concurrence of the evidence shews that it was this excessive restriction of credit which caused the severe demand for gold.

And now we see the practical results of the two policies: when all commercial and banking credit was on the verge of universal ruin, it was saved and restored by the **Expansive** Theory in 1793; in 1797 the **Restrictive** Theory was carried out to the bitter end, **and the result was the Stoppage of the Bank**

A consideration of all the circumstances induced the Bullion Committee to condemn the **Restrictive** Theory in the most emphatic terms: and all the greatest mercantile authorities of that period, including Peel himself, as we have shewn, in 1819, entirely concurred in these doctrines: and they said that no limitation of the Bank's power of issue could ever be prescribed at any period, however remote. That period, however, came in 1844

The next great crisis was in 1825. Ever since the beginning of 1824 there was a continual drain of bullion, which the Bank took no means to stop. It fell from 13¾ millions in March, 1824, steadily and continuously, to barely 3 millions in November, 1825, when every one felt a crisis to be impending. The papers discussed the policy of the Bank, and it was generally expected that it would rigorously contract its issues. The panic began on Monday, the 12th of December, 1825, with the fall of Pole, Thornton & Co., one of the principal city banks, which drew down with them forty country banks. A general run began upon all the city bankers. For three days the Bank pursued a policy of the most severe restriction. Mr. Huskisson said that during 48 hours it was impossible to convert into money, to any extent, the best securities of the Government. Exchequer bills, Bank Stock, East India Stock, as well as the public funds, were unsaleable. At last, when universal stoppage was imminent, the Bank completely reversed its policy. On Wednesday the 14th, it discounted with the utmost profuseness. Mr. Harman said—"We lent by every possible means, and in modes we had never adopted before; we took in stock as security; we purchased Exchequer bills; we made advances on Exchequer bills, we not only discounted outright, but we made advances on deposits of bills of exchange to an immense amount: in short by every possible means consistent with the safety of the Bank, and we were not, on some occasions over-nice; seeing the dreadful state the public were in we rendered every assistance in our power." Between Wednesday and Saturday the Bank issued £5,000,000 in Notes, and sent down to the country a large box of £1 notes which they accidentally found. This bold policy was crowned with the most complete success; the panic was stayed almost immediately, and by Saturday was over

The circumstances of this crisis are the most complete and triumphant example of the truth of the principles of the Bullion Report, and the **Expansive** Theory: and signally vindicate the wisdom of Peel in 1819, when he refused to adopt the **Restrictive** Theory, and impose a numerical limit on the Bank's issues

The next crisis was in 1837: but the Bank, foreseeing it, judiciously anticipated it, and made the most liberal issues to houses which required it. By thus adopting the **Expansive** Theory in good time, nothing more occurred than a severe monetary pressure, which was prevented from deepening into a crisis entirely by the judicious conduct of the Bank

The Bank Act was passed amid general applause, but, as said above, on the very first occasion on which its powers were tested, in April, 1847, it completely failed to compel the Directors to carry out its principle, and one-third of its bullion ebbed away, without any appreciable diminution of the amount of its notes in circulation

But, in October, 1847, a far severer crisis took place. The Bank made immense advances to other banks and houses, to prevent them from stopping payment. But numerous Banks and Commercial Houses did stop payment, and the resources of the Bank were exhausted. At last, after repeated deputations to the Government to obtain a relaxation of the Act, and with the stoppage of the whole commercial world imminent, the Government authorised the Bank to issue at discretion. And what was the result? The panic vanished in ten minutes! No sooner was it known that notes might be had, if necessary, than the want of them ceased. The whole issue of Notes, in consequence of this letter, was only £400,000, and the legal limits of the Act were not exceeded

Thus, on this occasion again, the **Restrictive** theory wholly failed; and the **Expansive** theory saved the country, and was the only means of saving the Bank itself from stopping payment

The next great crisis was in November, 1857, which was far more severe, as regards the Bank itself, than that of 1847. On

the 12th November, 1857, the Bank closed its doors with the sum of £68,085 in notes; £274,953 in gold; and £41,106 in silver; being a total sum of £387,144! Such were the resources of the Bank of England to begin business with on the 13th! Truly, said the Governor, it must entirely have ceased discounting, which would have brought an immediate run upon it. The bankers' balances alone were £5,458,000. It is easy to see that the Bank could not have kept its doors open for an hour

On the evening of the 12th the Government sent a letter to the Bank, authorising them to issue Notes at their discretion, but not at a less rate than 10 per cent.; and next morning the panic, as before, passed away

Thus, on this occasion, again, the **Restrictive** theory wholly failed: and the **Expansive** theory saved the country: and was the only means of saving the Bank itself from stopping payment

The next great crisis was in 1866, which was still more severe. Unfortunately, no investigation was held respecting it, so that there is no reliable account of its circumstances. But speculation had exceeded all due bounds. On the 10th of May there was a general run upon all the London banks. It was said, but we cannot say with what truth, that one great bank alone paid away £2,000,000 in six hours. After banking hours it became known that the great discount house of Overend, Gurney & Co. had stopped, with liabilities exceeding ten millions—the most stupendous failure that had ever taken place in the city. The result of such a catastrophe was easily foreseen; not another bank could have survived the next day; and that evening the Government again authorised the Bank to issue at discretion, at not less than 10 per cent. The Bank advanced £12,225,000 in five days: but the panic passed away

Thus, again, the **Restrictive** theory wholly failed: the **Expansive** theory saved the country, and was the only means of saving the Bank itself, as well as every other bank, from stopping payment

Thus we see the entire failure of Sir Robert Peel's expectations. He took away the power of unlimited issues from the Bank, and imposed a rigorous numerical limit on its powers of issue, under the hope that he had prevented the recurrence of panics. But

the panics recurred with precisely the same regularity as before ; and, therefore, in this sense too, the Act has failed : and when panics do occur, it is decisively proved that it is wholly incompetent to deal with them

17. It has been seen that it is a complete delusion to suppose that the Bank Act carries out the "Currency Principle." It might be supposed, perhaps, that if it did really carry out the "Currency Principle," it might prevent panics arising. General experience, however, entirely negatives this view. In 1764 the most terrible Monetary Crisis which had up to that time occurred, took place in Amsterdam and Hamburg, where the banks were really constructed on the "Currency Principle"

A decisive example of this took place at Hamburg in 1857. A similar Monetary Crisis took place there, as here, and the Bank being constructed on the "Currency Principle," had no power to issue Notes to support Credit. The magistrates were obliged to issue City Bonds to support the Credit of the merchants, exactly as the Government had issued Exchequer Bills in England in 1793. Here, also, the **Restrictive** theory wholly failed, and it was found necessary to adopt the **Expansive** theory to avert universal failure

These disasters took place where there was no Credit Currency at all, but what represented bullion : and they are conspicuous examples that panics occur just as readily under a purely Metallic Currency as under a Paper Currency

The experience of every other country exactly confirms the experience of England. At Turin the bank was constructed on some principle of limitation : but, in 1857, during a monetary panic, it was found necessary to suspend its constitution, and allow it to issue Notes to support Credit

The very same thing was conspicuously proved in 1873. In Austria, in North Germany, and in America, the banks were all constructed on some analogous principle of limitation on their issues. But in the severe monetary panic in each of these countries, it was found necessary to suspend their constitutions, and authorise them to issue at discretion to support commercial Credit

Thus, universally, throughout the world, it is proved by abundant experience, that the **Restrictive** theory cannot be

maintained after a monetary panic has reached a certain degree of intensity; and that it is absolutely necessary to adopt the **Expansive** theory to avert universal failure

18. The supporters of the Act of 1844 strenuously maintain that it is the complement of, and in strict accordance with the principles of the Act of 1819, and the Bullion Report. But such statements are utterly incorrect: and the following are the fundamental differences of principle between them—

I. The Bullion Report declares that the mere *numerical* amount of notes in circulation, at any time, is no criterion whether they are excessive or not

The theory of the framers of the Act is that the Notes in circulation ought to be exactly equal in quantity to what the gold coin would be if there were no Notes: and that any excess of Notes above that quantity is a *depreciation* of the Currency

Is this principle of the supporters of the Act in accordance with the principle of the Bullion Report?

II. The Bullion Report declares, and the supporters of the Act of 1819 maintained, that the sole test of the depreciation of the Paper Currency is to be found in the Price of Gold Bullion, and the state of the Foreign Exchanges

Ricardo says*—"The issuers of paper money should regulate their issues solely by the price of bullion, and never by the quantity of their paper in circulation. The quantity can never be too great nor too little, while it preserves the same value as the standard"

According to the supporters of the Act of 1844, the true criterion is whether the Notes do or do not exceed in quantity the gold they displace

Is the doctrine of the supporters of the Act of 1844 in accordance with the principles of the Bullion Report, and of the Act of 1819?

III. It was proposed to the Bullion Committee to impose a positive limit on the issues of the Bank, to curb their powers of mismanagement. The Bullion Report expressly condemns any positive limitation of its issues: and Peel, in 1819, and in 1833, fully concurred in this condemnation

* *Proposals for an Economical and Secure Currency*, § 3.

The Bank Act of 1844 specially limits the issues of the Bank

Does the Bank Act of 1844 coincide with the principles of the Bullion Report and the doctrines of Peel in 1819 and 1833?

IV. The Bullion Report, after discussing the most important monetary crises which had occurred up to that time, expressly condemns the **Restrictive** theory in a monetary panic, and says that it may lead to universal ruin: and recommends the **Expansive** theory

The Bank Act enacts the **Restrictive** theory by Law: and prevents the **Expansive** theory from being adopted

Does the Bank Act of 1844 agree with the doctrines of the Bullion Report, and of Peel in 1819 and 1833, on this point?

In 1793 the Bank adopted the **Restrictive** theory; and, when all commerce was on the brink of ruin, the Government, by issuing Exchequer Bills, adopted the **Expansive** theory, and commerce was saved

In 1797 the **Restrictive** theory was carried out to the end, and the result was the *stoppage of the Bank*

In 1825 the **Restrictive** theory was adopted for three days, and when commerce was on the brink of ruin, it was suddenly abandoned; the **Expansive** theory was adopted, and commerce was instantly saved

In 1836 a great crisis was imminent; the Bank, foreseeing it, adopted the boldest measures before it came on, and made immense advances to sustain commercial credit: the policy was successful, and averted a general panic

Peel, in introducing his measure of 1844, said that we must never again have such discreditable occasions as 1825, 1836, and 1839: but since 1844 we have had 1847, 1857, and 1866. On each of these occasions the **Restrictive** theory was enacted by Law: and on each occasion the Government was obliged to come forward and authorise the Bank to break the Law, to abandon the **Restrictive** theory and adopt the **Expansive** theory. And by so doing universal ruin was averted, and the Bank itself saved from stopping payment

Experience, therefore, has indisputably proved that the Bullion Report was framed with truer wisdom and scientific knowledge of the Principles of Paper Currency than the Bank Act of 1844. The only deficiency in the Report was that it failed to point out the

proper means by which the Paper could be kept at par with gold. But the true principle of controlling the Paper Currency is now well understood to be by adjusting the **Rate** of **Discount** by the Foreign Exchanges, and the state of the bullion in the Bank

Examination of the Arguments alleged for maintaining the Bank Act

19. It has now been clearly shewn that the Bank Act has completely failed both in **Theory** and **Practice.** It has been shewn that it is based on a **Definition** of the word "Currency," which is entirely erroneous in Commercial Law, and in Philosophy—that it professes to adopt a Theory of Currency which it has entirely failed to enforce—that, if the Directors choose, they can mismanage the Bank quite as easily under the Act as before it. Lord Overstone justly pointed out that the radical vice of the Bank principle of 1832 was that the Bank might be completely drained of gold without a single note being withdrawn from the hands of the public: the Bank Act was expressly framed with the intention of compelling the Directors to withdraw notes from the public exactly as gold was drawn out of the Bank. But it was decisively proved in April, 1847, that the Bank Act had precisely the same radical defect as the Bank principle of 1832; the Directors allowed many millions of gold to be withdrawn from the Bank without withdrawing a single note from the public, and the pretended "Mechanical" action of the Act wholly failed to prevent them doing so—that the Act was expressly framed with the expectation that it would prevent commercial panics, and that it has wholly failed in doing so: and hitherto panics have recurred with the same regularity as before —and, furthermore, although the Act is in no sense whatever the original cause or source of these crises, yet, when they *do* occur, and they reach a certain degree of intensity, the operation of the Act, by visibly limiting the means of assistance, deepens a severe monetary pressure into a panic, which can only be allayed by its suspension, and a violation of its principles

In every one of these respects the Bank Act has completely failed: and in regard to these things its credit and reputation is utterly dead and gone. It is, therefore, necessary to examine

fairly the arguments alleged in its favour, and the reasons urged why it should still be maintained

The supporters of the Act, allowing that it has failed in some respects, yet maintain that the Directors having committed the same mischievous errors as they had done before it, it arrested their mis-management much sooner than would otherwise have been the case; and that when the panic did occur, it was only through the Act that the Bank had six millions of gold to meet the crisis; and that, by this means, the convertibility of the Note was secured

So far as regards the crisis of 1847, it must be admitted that there is much force and truth in this argument. The Directors at that date shewed that they had not yet acquired the true principles of Banking, and it must be conceded that it was entirely owing to the Act that they were checked in their mistaken policy while there was still six millions of gold in the Bank

But the same ground of censure did not apply to the crisis of 1857. In the interval between 1847 and 1857, the Directors really at last grasped the true method of controlling the Paper Currency by means of the Rate of Discount. The truth of this principle was probably more enforced upon their attention by the limitation imposed by the Act than it would otherwise have been. It has never been alleged that the crisis of 1857 was in any way due to the Act. But it is a matter of positive certainty that since that date the Bank has fully recognised and adopted the principle of governing the Paper Currency by means of the Rate of Discount. The same rule has been adopted by the Bank of France, and this is now the recognised principle by which every Bank is managed. Certainly, since 1857, there has not been a breath of blame on the general management of the Bank. Granting every merit which can fairly be due to the Act, that it has compelled the recognition and adoption of this principle some years earlier than it otherwise would have been, it may be said that the Act has now fulfilled its purpose. It has done all the good that it can do. The Directors now perfectly understand, and have ever since 1857, conducted the Bank with the greatest success on sound principles. Having, therefore, accomplished this great purpose, the Act has done its work, and has ceased to be necessary: and its operation at other most important times being

proved to be injurious by the most overwhelming evidence, it may now be safely and advantageously repealed—so far, at least, as regards the limitation of its power of issue. And the reason for the expediency of this change is this—

Under the present system of Commercial Credit, there must be some Source with the power of issuing undoubted Credit to support solvent Commercial Houses in times of Monetary Panic

It has been conclusively shewn in the preceding remarks, that it is entirely futile to expect that Commercial Crises can be prevented, and that they occur with precisely the same violence in places where there is a purely metallic currency as anywhere else. Hence the illusions in this respect, on which the Act was founded, are now completely vanished

In all cases, houses which are clearly insolvent should not be supported; they ought to be compelled to stop without any hesitation. To support such houses is a fraud upon their creditors. But under our complicated system of commerce, the Credit of even the most solvent houses is so intertwined and connected with others, that no one can tell how far any house, even of the highest name, is solvent. Consequently, every one is affected by this universal discredit. Many houses which are really solvent, may have their assets locked up in some form which is not readily convertible. Under such circumstances it is absolutely indispensable, to prevent universal ruin, that there should be some source to afford undoubted credit to houses which can prove their solvency. And there are but two sources from which such credit can be issued—the Government and the Bank of England

In 1793, the Bank resolutely refused to support Commercial Credit, and the Government were obliged to assist solvent houses with Exchequer bills, and this saved the commercial community from ruin. In 1797, the Bank also refused to support commerce, and the result was its own stoppage. After the stoppage, however, it largely extended its issues, and commerce was relieved

In every commercial crisis since 1797, however sternly the Bank has adopted the **Restrictive** Theory at first, it has ultimately been driven to abandon it, and adopt the **Expansive** Theory. In 1825, while the Bank persisted in the **Restrictive**

Theory, some eminent bankers stopped payment with assets worth 40*s.* in the pound. Two days afterwards the Bank changed its policy, and issued notes with the most profuse liberality, and the panic vanished. If the Bank had adopted this principle at first, and assisted those bankers who were really solvent, they would have been saved from stopping payment

The very same principle was decisively proved in 1847, 1857, and 1866; the **Restrictive** Theory was in those years enforced by law. But no Government could maintain the Act and the **Restrictive** Theory to the bitter end, and face the consequences of producing universal ruin in pursuance of a Theory, which the most distinguished authorities of former times had unanimously condemned

It is, therefore, irrefragably proved by the unanimous opinion of the most eminent commercial authorities, and the clear experience of 100 years, that the **Restrictive** Theory in a commercial crisis is a fatal delusion; and that when a commercial panic is impending, the **only** way to avert and allay it is to give prompt, immediate, and liberal assistance to all houses who can prove themselves to be solvent; at the same time allowing all houses which are really insolvent to go. Universal experience proves that this is the *only* means of separating the sound from the unsound, and averting general ruin by preserving the former

An **Excessive Restriction** *of* **Credit** *produces and causes a* **Run** *for* **Gold**

20. As a matter of fact it is perfectly well known to all bankers that an excessive restriction of credit *produces* and *causes* a run for gold

Sir William Forbes, in his interesting *Memoirs of a Banking House*, says of the crisis of 1793—"These proceedings, which obviously foreboded a risk of hostilities, were the signal for a check on mercantile credit all over the kingdom; *and that check led by consequence to a demand on bankers for the money deposited with them*, in order to supply the wants of mercantile men"

The Bullion Report expressly attributes the stoppage of the Bank in 1797 to the merciless restriction of Credit

In 1857, discounts had ceased at the various banks, and a

general run was commencing upon them, when the Treasury letter came: this allayed the panic, and stopped the run

In 1866, matters were a great deal worse. In consequence of the restriction on Credit, a most severe and general run took place on all the London bankers. The sum paid away during the panic can probably never be known, but it was something perfectly fabulous. And this general run upon the bankers was certainly caused and produced by the excessive restriction of Credit, caused by the Bank Act

The result of such an Act was most distinctly predicted by Henry Thornton, one of the joint authors of the Bullion Report, in his treatise on the Paper Credit of Great Britain, published in 1802. He says—

"Two kinds of error on the subject of the affairs of the Bank of England have been prevalent. Some political persons have assumed it to be a principle, that in proportion as the gold of the Bank lessens, its paper, or, as is sometimes said, its loans (for the amount of the one has been confounded with that of the other), ought to be reduced. It has been already shewn, **that a maxim of this sort, if strictly followed up, would lead to universal failure**"

The Bank Act of 1844 was constructed on this precise principle, and Thornton's prediction has been strictly verified

Seeing, then, that it is a matter of absolute demonstration that it is indispensably necessary that there must be some source having the power to issue solid Credit to support solvent houses in Monetary Panics, it only remains to consider whether that source should be the Government, or the Bank—and very convincing reasons shew that it ought to be the Bank rather than the Government

Such a duty is quite out of the usual line of the Government. They must issue a Special Commission to investigate the solvency of those merchants who ask for assistance. Such a Commission would never be appointed until matters had become very severe, and much suffering would be caused by the unnecessary delay

But such a thing is the ordinary and every day business of the Bank. The merchant simply goes in the ordinary way of business to the Directors, satisfies them of his solvency, gives the necessary security, and receives the assistance without delay

These considerations, as well as others that might be adduced, shew that the proper source to have this power is the Bank of England and not the Government

21. Some persons, however, might suppose that such an issue of notes might turn the Foreign Exchanges against the country. It was formerly supposed, and the idea pervaded Sir Robert Peel's speech, that the Foreign Exchanges are mainly influenced by the numerical amount of Notes issued. But in modern times it has been proved that the *Rate of Discount* is an infinitely more powerful method of acting on the Exchanges than the amount of Notes. And this may be said to be a new discovery since Sir Robert Peel's speech ; for there is not a trace of the principle to be found in it. In former times, certainly, when there were multitudes of Banks issuing torrents of Notes, these Notes lowered the Rate of Discount, and drove bullion out of the country. But under the modern system, when these issues have been happily suppressed, all danger on this score has vanished : and under present circumstances no issues are excessive which *do not lower the Rate of Discount*

The doctrine laid down in the Bullion Report, and by all the most eminent authorities of that period, was, that the true criterion of the proper quantity of Paper Currency was not in its numerical amount, but the state of the Foreign Exchanges and the Market Price of Gold Bullion. This doctrine was true so far as it went: but unfortunately they never investigated the correct method of keeping the Paper Currency in its proper state. The principal method thought of until after Sir Robert Peel's time, was simply diminishing its numerical amount. It is true that raising the Rate of Discount was reckoned among the subsidiary methods of curbing it, but so little was its true importance understood, that it was not even mentioned by Sir Robert Peel. Since his time, however, it has been demonstrated by argument, and proved by conclusive experience, that it is the true **supreme power of controlling the exchanges** and the **Paper Currency,** and that all other methods are insignificant compared to it. And since the Directors now thoroughly understand and act upon this principle, they may be entrusted with unlimited powers of issue

22. Some able authorities, however, are of opinion that the ct should be maintained, as it strengthens the hands of the irectors in carrying out this principle, and enforcing the rule. hat, without the Act, commercial pressure upon them might metimes be too strong to resist. Whatever force there may be this argument, it will be found that the other arguments completely outweigh it; and, in fact, such an argument naturally ads us to consider the constitution of the Directorate itself

By a remarkable custom professional bankers are excluded om the Directorate of the Bank, which is exclusively composed f merchants. It has long been recognised that Commercial redit and Banking Credit are of two distinct natures, and in any respects essentially conflicting and antagonistic. The same ersons should not carry on both kinds of business; great bankers ould not be merchants, and great merchants should not be ankers. The **Duty** of a banker frequently conflicts with, and antagonistic to, the **Interest** of a merchant. A banker's uty is to keep himself always in a position to meet his liabilities n demand; and when there is a pressure upon him, it is his duty raise the price of his money. But the **Interest** of a merhant always is to get accommodation as cheap as possible. Hence, s the Directors emanate exclusively from the Commercial body, e **Interest** of the body from which they come has been frequently opposed to their **Duty** as Directors of the Bank. And, rmerly, it cannot be denied that their sympathy for the body to hich they belonged has interfered with their proper course of ction as Directors of the Bank, and has been the cause of many rrors

The whole principles of the subject have now been brought to trictly scientific demonstration. If, therefore, the Directors find hemselves unable to withstand Commercial pressure, and fulfil heir undoubted duty, it would seem to raise the question whether me modification of the constitution of the Directorate might not e desirable, and whether a certain portion of them, at least, hould not be as unconnected with commerce as private bankers re. There are very good reasons why they should not be *xclusively* taken from the Commercial body

The overwhelming weight of practical considerations is in avour of restoring the Bank to its original condition, and abolish-

ing the separation of the two departments; which has been shewn was intended to carry out a particular **Theory**, but which it wholly fails to do. For while times are quiet, or even during a tolerably severe monetary pressure, the Act is wholly in abeyance, it is utterly inoperative. But when a real commercial crisis takes place, and it totally fails to prevent these, as it was expected to do —and when that crisis has deepened beyond a certain degree of intensity, then the Act springs into action with deadly effect. It prevents by Law the only course being adopted which the unvarying experience of 100 years has shewn to be indispensable to avert a panic, namely, a timely and liberal assistance to solvent houses: then follows a wild panic; and if the Act were rigorously maintained, then universal ruin

There is also another circumstance of the greatest importance to be observed, but which has not obtained sufficient notice. By the Bank Act of 1833, Bank Notes are made legal tender *only while the Bank pays its Notes in gold on demand.* As soon as it ceases to do so, no one can be compelled to take them, any more than any other bank notes. Consequently, if the Bank were compelled to stop payment in a panic, by enforcing the Bank Act of 1844, to its last extremity, as it most certainly would have done in 1847, 1857, and 1866, its Notes immediately cease to be legal tender by the Bank Act of 1833, and their holders could not compel any one to receive them in payment of a debt

The true object of the Act is to ensure the convertibility of the Bank Note. But the principle of the Act, or the machinery devised for that purpose, is merely a means to that end, and it has been proved to be defective. A better means of attaining the object of the Act has been ascertained and demonstrated to be true by the strictest scientific reasoning, as well as by abundant experience, since the passing of the Act, which is acknowledged to be efficacious, and, therefore, the Act is no longer necessary. The necessity of passing the Act was a deep discredit to the Directors of the Bank. It was a declaration that they were not competent to manage their own business. But now that they have shewn that they are perfectly able to do so, it is no longer necessary. It may be sometimes necessary to put a patient into a strait-waistcoat; but when the patient is perfectly recovered, and is restored to his right mind, the strait-waistcoat may be removed—especially

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as it is found that, under certain circumstances, the strait-waistcoat not only strangles the patient, but scatters death and destruction all around

23. In the debate on Mr. Anderson's motion in the House of Commons, on the 25th March, 1873, the Chancellor of the Exchequer, Mr. Lowe, seemed to turn commercial panics into ridicule. He said that we never hear of military panics, or naval panics; why, then, should we hear of commercial panics? He seemed to consider English merchants as an inferior breed of men to English soldiers and English sailors. For once the Right Honourable gentlemen's acumen was at fault. The analogy is wholly erroneous. It is the duty of military and naval men to face death; it is their profession. But it is not the duty of commercial men to face ruin with equal equanimity. Under the modern system of commerce, discount is as necessary to commercial existence as air is to the life of the body. When the whole commercial community sees the very means of their existence rapidly diminishing before their eyes, they naturally rush to obtain Notes while they can, and on such occasions no raising of the Rate of Discount can check the demand. If they cannot get Notes, they run for Gold. Such a state of things naturally and inevitably produces, and invariably will produce a panic. The analogy of the Black Hole at Calcutta is much more true. When 150 wretched men were shut up for a whole night, in a tropical climate, in a room less than twenty feet square, with only one small window to admit air, they naturally fought and struggled to get near it to preserve their existence. Under such circumstances there was, and there always would be a panic. So, in the commercial world, when they see the very means of their existence rapidly diminishing before their eyes, they naturally fight and struggle to get possession of it, and they always will do so under similar circumstances. If the "Currency Principle" were carried out to the last extremity in a Monetary Panic, the survivors of the commercial community would not be proportionately more numerous than the survivors of the Black Hole of Calcutta

24. We thus see that Sir Robert Peel was greatly deceived in his expectation that the limitation of the Bank's power of issue

would prevent commercial crises. On this occasion he erred, as so many others have erred, in Economics, by too limited a consideration of facts. It is true that on *some* occasions the Bank had fostered an over-spirit of speculation by too profuse an issue of notes. But commercial crises occur from other causes besides: they have occurred when there was no profuse issue of notes, and in places where there were no notes beyond bullion. Whenever there are expected to be great fluctuations in prices from whatever cause arising—either from great scarcity or from great abundance—from the transition from peace to war, or from war to peace—from the discovery of new profitable openings of every description—from great disturbance in the usual course of trade—the speculative or gambling propensity is sure to be called forth, and lead to a pressure more or less intense. In 1694 the first joint stock mania took place, when there was no excessive credit. In 1720 there was no excessive issue of notes. In 1763 there was no excessive issue of notes, and the great commercial crises of that year took place at Amsterdam, where the "Currency Principle" was in full operation. In 1772 there were excessive issues of notes, which greatly conduced to the crisis. In 1783 the crisis seems to have been due to the transition from war to peace. Before 1793 there were excessive issues of notes by the miserable traders whom the monopoly of the Bank permitted to grow up as bankers. Previous to 1797 the Bank itself had made excessive issues, compelled thereto by Pitt. In 1808 the Bank greatly fostered the spirit of speculation. In 1824 and 1825 the Bank was far too long before it contracted its issues. So also in 1836 and 1839. But in 1847, 1857, and in 1866, the great crises were in no way whatever attributable to excessive issues. In 1847 it was excessive railway speculation. In 1857 it was due to a series of causes wholly irrespective of issues, and in that year the severity of the crisis at Hamburg, where the "Currency Principle" is carried out, was so great that the Government was obliged to come forward to create a solid credit to support solvent houses. In 1866 there were no excessive issues of notes. The most bigoted opponent of the Bank could by no possibility say that the crises of 1857 and 1866 were in any way whatever attributable to the Bank, or could, by any possibility have been averted by any management of the Bank

The crisis of 1808 was due to the sudden opening of the South American markets. That of 1825 to the anticipated profits on working foreign mines. That of 1836 partly to the rapid extension of Joint Stock Banks. That of 1847 to excessive railway speculations. That of 1857 to excessive trading especially in America. That of 1866 to the too rapid extension of Financial Companies on the limited liability principle. Hence we see that a law made on the supposition that all crises are caused by a single circumstance, and whose operation is only adapted to that cause, must necessarily fail

Sir Robert Peel was further in error in saying, that during periods of commercial crisis private persons make advances. It may, perhaps, happen that here and there a private person may assist a friend, but, as a general rule, it is wholly without foundation. It was observed, before the passing of the Act, that in times of commercial pressure there was a general tendency to hoard. This was observed in 1825, in 1836, and in 1839. And this tendency was greatly aggravated by the Act of 1844, and was displayed with far greater intensity in 1847. When the public saw that the Bank's reserve was diminishing so rapidly, and no one knew what would be done, a general rush was made at its notes, and they were hoarded away in millions. No sooner was the Act suspended than they came forth in millions from their hiding places, and the panic passed away. Therefore, in this fundamental point, there is no doubt whatever that Sir Robert Peel was entirely wrong, and that the allegation of the opponents of the Act is strictly justified—that, when a pressure reaches a certain point, the Act aggravates and intensifies it into a panic, which can only be allayed by the suspension of the Act

Moreover, Sir Robert Peel was quite mistaken in supposing that bankers only make advances out of *bonâ fide* capital. This is so fully set forth in the chapter on the Theory of Banking, that we need only to remind our readers that all banking advances are made, in the first instance, by **creating credit.** Every banker knows perfectly well that an excessive restriction of credit causes and produces a run for gold. When the banks see that they can get no assistance from the Bank of England, they must cease discounting. But if they cease discounting, their customers have still engagements to meet, which, of course, they will do as long

as they can; and, in order to do so, they have no other resource but to draw their balances, and this, of course, will end in making their bankers stop payment; and bankers and customers will fall together

Many persons have observed that the variations in the Rate of Discount have been much more frequent since the Act than before it; and they maintain that the Bank Act is the cause of these variations. In answer to this, it may be said that it was the very fixedness of the Rate of Discount in former times that was the main cause of many calamities; and that if the variations had been more frequent and severe, these calamities would have been saved. And as for the frequent variations since the Act, it may be confidently said that the Bank Act is in no way whatever their cause. Their true cause is the increased knowledge of the true scientific principles of Banking, and the increased speed and cheapness with which bullion now flies from one commercial centre to another

These considerations give a final and conclusive answer to those persons who conceive that the Rate of Discount can be kept fixed. These variations are in modern times absolutely indispensable, and the only method by which the Bank can preserve its security. They must necessarily have been made, had the Bank Act never existed at all. In fact, if this principle of controlling Paper Currency had been understood and acted upon in former times, there never would have been any necessity for the Act. It was the very ignorance or neglect of this principle which had brought the Bank into danger so many times before

25. It is a matter of very serious doubt indeed whether the sweeping words of the Bank Act of 1844 have not rendered all English banking illegal. For the eleventh section enacts, in the broadest possible terms, that no banker "shall make any engagement for the payment of money payable to bearer on demand." Now we have shewn the utter misconception of the very nature of banking business so generally prevalent, even among persons who might naturally have been expected to have been better informed. Thus, even Gilbart and Lord Overstone consider the business of banking to consist in borrowing money from one set of persons and lending it to another. So, also, paragraph 62 of the Report

of the Committee of the House of Commons, on the crisis of 1857; among other errors and misconceptions, which we have already refuted, says—"*the use of Money, and that only*, they regard as the province of a bank, whether a private person or incorporation, or of the banking department of the Bank of England"

Now we have over and over again pointed out that this is the business of a Bill Discounter, and not of a "Banker." A banker never lends money, in the first instance; we have already explained that the very essence of banking is to create Credit, or liabilities payable to bearer on demand. We have already shewn* how completely Mr. Cardwell and Mr. Wilson were mistaken as to the very nature of the business of banking. Equally ill informed, also, was Mill, for, in the early editions of his *Political Economy*, he has this note in his chapter on the *Regulation of Currency*, Book III., ch. 24, § 3.—"It would not be to the purpose to say, by way of objection, that the obstacle may be evaded by granting the increased advance in book credits, to be drawn against by cheques, without the aid of bank notes. This is, indeed, possible, as Mr. Fullarton has remarked, and as I have myself said in a former chapter. *But this substitute for bank note currency certainly has not yet been organised (!!)*; and the law having clearly manifested its intention that, in the case supposed, *increased Credits should not be granted*, it is yet a problem whether the law would not reach *what might be regarded as an evasion of its prohibitions*, or whether deference to the law would not produce (as it has hitherto done!) on the part of banking establishments, conformity to its spirit and purpose, as well as to its mere letter"

Now what Mill, in this extract, said had never yet been organised, happens to be the precise thing in which "banking" consists! It is right to add, that in the later editions of his work this paragraph has been omitted

But though Mill shewed his ignorance of the existing facts in this case, his admission is valuable that this practice is a direct violation of the spirit and purpose of the Bank Act; but whether it is not also a direct violation of its *letter*, is very seriously doubtful

All banking advances, then, are made by creating Credit, or Deposits; and whether this Credit is transferred from one person

* *Vol. I., Ch.* 6, § 7

to another, by means of Bank Notes, or Cheques, in no way affects its nature or its quantity. And it is this very thing which is already creating so much alarm in the minds of many persons when they see the huge mass of Deposits, or Banking Credits, reared up by the London banks on so slender a basis of Bullion: for these Deposits are, in reality, neither more nor less than so many Bank Notes in disguise

Now, when a banker creates a Credit in his customer's favour, either in exchange for money, or bills, or any other security, by the fundamental contract between banker and customer, he engages to pay this Credit to his customer, *or to any one else to whom his customer may assign it:* and in token of this he delivers to his customer a book containing blank slips payable to bearer on demand, or to order on demand, called in modern commercial language, Cheques. The very essence and business of banking consists in "making engagements to pay money payable to bearer on demand." It may be said, indeed, that a banker is not a party to the cheque: true, his name is not on the face of the instrument, as an obligor; but he is, *bonâ fide*, and, in reality, a party to it so long as he has funds to meet it: for it is a legal liability of his to pay his customer, or any one his customer may assign it to; and by the very fact of his creating the Credit, he authorises his customer to put it into circulation. So long as his customer does not exceed the amount at the credit of his account, the banker is legally a sleeping partner to the cheque

Now, suppose that two men agree to assail a traveller; one of them points a loaded pistol at the traveller's head, the other pulls the trigger: both are equally guilty of the murder. Suppose one man lights a match and gives it to another man, and tells him to set the house on fire, both are equally guilty of the arson

The very same argument applies to the ordinary routine business of banker and customer. The law distinctly says that no banker "shall make any engagement to pay money payable to bearer on demand." But the ordinary routine business of a banker is to create a credit in favour of his customer which he expressly authorises his customer to make payable to bearer on demand, and put it into circulation. Now, what is this transaction but a clear conspiracy between the banker and the customer to violate the express words of the Bank Charter Act of 1844? The banker

creates the engagement, and the customer puts it into circulation. The banker loads and points the pistol at the Bank Act, and the customer pulls the trigger: or the banker lights the match and delivers it to the customer who consumes the Act. How is this transaction one whit less a conspiracy in law than in the case of the murder or the arson?

Of course, the whole difficulty has been created by the gross ignorance of those who drew the Act of the routine business of banking: but that is no business of ours. There stand the distinct words of the Law; and there are the actual facts of banking; and it is not possible for the wit of man to reconcile them

The Cheque Bank

26. The subject cannot fail, we think, very soon to engage the attention of the Courts of Law and the Legislature, for very recently a new institution has been founded which is still a bolder contravention, not only of the Bank Charter Act of 1844, but of all our monetary legislation for the last 100 years, with a certain exception

This Bank is called the **Cheque Bank,** and we will first describe its method of business, and then compare it with the existing monetary Laws

It receives Money only, and in exchange for this money it issues an exactly equal amount of cheques payable to order, and crossed with the words "—— & Co."

Thus, suppose a person pays in £50; it will give him a book containing ten cheques payable to order and crossed, and perforated with the mark not exceeding £5. The customer may, of course, fill up the cheque with £5, or any less sum: but not with any greater sum: and supposing that any balance remains after the customer has exhausted the 10 cheques, the Bank will give him cheques to the amount of the balance

As the cheques are crossed it pays no money over the counter, but all its cheques must pass through the hands of a banker, and are only payable to a banker. But though the Bank itself only pays them to a banker, any banker or other person may give cash for them just in the same way as for an ordinary cheque, and in

the first year of its existence it has already established relations with about 1,500 home, foreign, and colonial banks, which will cash its cheques

The plan adopted by this Bank obviates an objection to which ordinary cheques are liable: when a customer places money with an ordinary banker, the banker gives him a cheque book, but there is no security that the customer may not draw cheques in excess of the credit he has in the Bank: consequently, no one who takes an ordinary cheque has any guarantee that the drawer has any funds to meet it. But this cannot happen with the cheques of the Cheque Bank. They are not issued except in exchange for money: and any one who takes one of them is positively assured that it will be paid. These cheques, therefore, have all the actual security of cash. They are intended by the promoters of the bank to be received as a substitute for cash; and already several Railway and other companies have agreed to receive them as cash. The Directors also propose to supersede Post Office Orders; and there can be no doubt that they are far more convenient and cheaper than Post Office Orders. As the Directors take care to issue no more cheques than money paid in, they publicly announce that none of their cheques will ever be refused, however long it may remain in circulation. These cheques are, therefore, in reality, crossed Bank Notes

Now we do not intend for one moment to question the merit, the ingenuity, and the utility of this Bank. But the question is, How does it consist with the whole of our monetary legislation for the last hundred years, as well as with the Bank Act of 1844? About one hundred years ago many parts of the country were deluged with silver notes for 5*s.* and 10*s.*, and even less: they were found such an intolerable nuisance that an Act was passed in 1775 to prohibit all notes under 20*s.*; and in 1777 another Act was passed, prohibiting all notes under £5. And, with the exception of the period between 1797 and 1829, it has been the inflexible determination of the Legislature to prohibit any banking obligations payable to bearer on demand, for less than £5, from being issued and circulated. And since the Bank Act of 1844, even this right has been restricted to those bankers who were in existence at that period. No new banks may issue obligations payable to bearer on demand. It was even for a long time illegal

to draw cheques for less than £5, though that restriction is now removed. It is perfectly well known that coin cannot circulate along with paper of the same denomination; consequently, for a hundred years it has been the settled purpose of Parliament that no paper shall come into competition with the coin of the realm

Now the Cheque Bank publicly guarantees the payment of all its cheques. It is, therefore, avowedly a party to them. What, then, prevents them, or is supposed to prevent them, from being an express violation of the words of the Bank Charter Act?—

1st. It is said that they are issued payable to order on demand, and not to bearer on demand

Now, this cannot save them from the penalties of the Act because as soon as the payee has indorsed them, they become payable to bearer on demand; and consequently, the bank is a party to an obligation payable to bearer on demand contrary to the express words of the Act

This subtlety, therefore, will not hold water for an instant

2nd. But there is a second one. The cheques are *crossed*, and, therefore, they are not literally payable over the counter to *bearer* on demand; but only to the bearer's banker, or agent, on demand

Now this is the sole subtlety which is supposed to save these instruments from being a direct violation of the Bank Act. They are distinctly Bank Notes—but they are *crossed* Bank Notes, and, therefore, are supposed to evade, by the skin of their teeth, the precise words of the Act. Now it is a well known maxim of law, that no one shall do indirectly what the law forbids to be done directly. Now the Law most expressly forbids any banking obligations payable to bearer on demand to be issued; and it is supposed that it will allow its solemn purpose to be set asside by the flimsy dodge of making the obligations payable to bearer's *agent* on demand!

Now whether a Court of Law could, by any possibility, hold that these ingenious gentlemen have succeeded in evading the precise *letter* of the Law, we shall say nothing; because we little doubt but that before very long the question will be formally investigated

But there can be no possible doubt that these instruments, these crossed Bank Notes, are an utter and complete violation of the manifest purpose and intention, not only of the Bank Charter Act, but of all our monetary legislation for the last century. For

what is easier than for the Bank and its customers to agree to make these Cheques for £1, and put them into circulation? Then we have at once £1 Bank Notes. So also the cheques for 10*s.* and 5*s.* are the old silver notes back again. If the Cheque Bank may do this with impunity, why may not every other bank in the kingdom do the same?

The Cheque Bank professes, for the present at least, to issue its cheques only in exchange for cash. But if it does so in exchange for cash, what is there to prevent them from issuing them in exchange for bills and other securities? And why should not every other bank do precisely the same thing, if the Cheque Bank may? If the *crossing* is sufficient to save them from the penalties of the Act, they may equally be issued in exchange for bills and other securities

No bank discounts a bill, or creates a credit in favour of a customer, unless it believes its advance secured. And if it creates a credit in his favour which he may the very next instant demand payment of in cash, it may just as well give him these crossed Bank Notes, which will probably remain some time in circulation. There is nothing wanting but that the banker and the customer should agree to draw these cheques for even sums such as £5 and £1, or any others, and we have at once the power of unlimited issues of Bank Notes restored to the banks

Now if it should be found that the ingenuity of these gentlemen has been successful, they will have completely picked the lock of the Bank Charter Act, and opened the floodgates to inundate the country with boundless quantities of paper money, which it has been the settled purpose of the Legislature to suppress

The directors of the Bank, to do them justice, make no secret of their intentions; they intend to revolutionise the banking system of the country, and they will assuredly do it, if their experiment is allowed to proceed. For this Bank is the germ of a system which will reduce all our monetary laws and Bank Charter Acts to waste paper

After the passing of the Bank Act of 1844, a custom sprang up in some of the Midland Counties of customers drawing cheques on their bankers, which the banker accepted. These, of course, were simply Bank Notes: and a clause was inserted in the Stamp Act of 1854 to preclude such proceedings

Thus the Legislature has manifested its fixed determination to suppress banking obligations payable to bearer on demand; and when certain parties had discovered what they thought a loop-hole in the Act, Parliament immediately took care to stop it up. Now, is it likely that when the Law Officers of the Crown and the Chancellor of the Exchequer are fully aware of the inevitable consequences which will, sooner or later, follow the operations of this Bank, they will suffer it to exist? Cheque Bank cheques are nothing more than accepted cheques, which have already been put down by law. The express purpose of Parliament is to suppress unlimited issues of circulating Banking Credit, and is it likely that they will permit their fixed determination to be set at nought by the paltry quibble that these Bank Notes are not payable to *bearer* on demand, but to *bearer's agent* on demand? The ingenious gentlemen who devised the Cheque Bank have laid a cockatrice's egg, which, if suffered to come to maturity, will inevitably devour the Bank Charter Act

27. This circumstance will, no doubt, tend to accelerate what statesmen of all parties are so anxious to avoid, a thorough and searching investigation into the whole of our Banking system. But, however they may try to stave it off, such an inquiry will inevitably come. For each succeeding crisis will be more severe than its predecessor. In 1847, the first crisis after the Act of 1844, the Credit system was comparatively small; it had greatly increased in 1857, and the crisis was more severe; in 1866 it had greatly increased, and the crisis was far more terrible; and so it will be in future. Every year the system of Credit is attaining more colossal dimensions, and, like a huge octopus, it now grasps all classes, and almost all persons, in its embrace. And, like the throes of Enceladus, it will periodically convulse the world, until it is settled on true scientific principles

CHAPTER XVII

ON THE RISE AND PROGRESS OF JOINT STOCK BANKING IN ENGLAND

1. It is very commonly supposed that Joint Stock Banks were not permitted by law in England before 1826, nor in the metropolis till 1833, but the preceding narrative shews that this idea is incorrect. By the common law Joint Stock Companies of all sorts, including, of course, banks, are perfectly legal, and consequently, if we wish to have a correct idea of the matter, we must observe this, and then ascertain what changes and modifications were made in the common law by successive Acts of Parliament

2. Although the first joint stock mania in England took place in 1694, no one, at that time, thought of getting up a joint stock bank, in fact, joint stock bank shares are the very last thing any one would think of getting up as a mere speculation. When the Bank of England was founded, it received no monopoly in its favour, and it was only in 1697, after the disastrous failure of the Land Bank Scheme, and the ruin of public credit, that the Bank was enabled to obtain a monopoly. But even that did not affect the common law right to establish such institutions, it only said that no rival bank should be erected or countenanced by Parliament. None, however, were formed; but, in 1708, another Company began doing banking business by issuing notes. The Bank then, in 1709, obtained the clause in the Act of that year, prohibiting any company of persons, exceeding six in number, from "borrowing, **owing**, or taking up money on their bills, or notes payable to bearer on demand," which, we have shewn, was the well understood meaning of the word "banking" at that

time. This clause was effectual up to 1742, when, in the Act of that year, it was re-enacted in much more full and explicit terms. But still the restriction was confined to borrowing, or **owing,** money on their bills, or notes. Consequently, the method of creating liabilities by means of entries and cheques, which was borrowed from the Dutch by our bankers, was not affected by the restrictive words of the Act. When, therefore, the London bankers discontinued their issues of notes, and restricted themselves to entries and cheques, there was no law whatever to prevent joint stock banks being formed, and carried on by that method. This, however, completely escaped observation, and we can have very little doubt that if this flaw in the monopoly had been discovered, and an attempt made to take advantage of it, Parliament would immediately have put it down, and there can be no possible doubt but that it was their manifest intention to create a complete and effectual monopoly on behalf of the Bank, and protect it from any rival banks of any sort whatever. The effects of this monopoly, however, were most disastrous. Bank of England notes had no circulation beyond London, and it would not establish any branches in the country. No other powerful and wealthy banks could be formed, the consequence was, that when enterprise awoke in the country, in the last quarter of the last century, and there was a great demand for an increased Currency, all sorts of petty tradesmen in all directions, grocers, linen-drapers, cheesemongers, tailors, &c., started up and turned "bankers," *i.e.*, issuers of promissory notes, so much so, that, in 1793, there were about 400 of these country "bankers." But, of course, this Paper Currency was of a most rotten description, and on the occasion of any great commercial crisis they failed by dozens. In the great crisis of 1793, no less than 100 stopped payment, and double that number were greatly shaken. In 1810 about a similar number stopped, a great number in 1812, and in the three years, 1814-15-16, ninety-two commissions in bankruptcy were issued against banks, and, allowing the usual proportion of four suspensions to one bankruptcy, in those three years alone about 360 banks stopped. In twenty-eight years, from 1791 to 1818, the official return shews that 273 commissions were issued against bankers, or we may fairly assume that upwards of 1000 banks stopped payment during that period. The intolerable hardship of the monopoly of the Bank Charter may be

conceived, when the Bank, doing no business itself at such places as Bristol or Liverpool, no powerful bank could be formed at these places on account of it. These enormous failures among the country bankers, spreading ruin and desolation throughout whole districts of territory, naturally turned public attention to the Scotch system of banking, where, with the single exception of the Ayr bank, there had been no failure of a joint stock bank. Mr. Joplin is the earliest person that we are aware of, who discovered that the Charter of the Bank of England did not prevent banking companies being formed which did not issue notes. In a pamphlet, entitled *Supplementary Observations to the Third Edition of an Essay on Banking, &c.*, 1823, he says, p. 84—"That public banks have not hitherto existed, more especially in London and Lancashire, seems to have risen from the want of a proper knowledge of the principles of banking, rather than from the Charter of the Bank of England, *which, I find, does not prevent public banks for the deposit of capital from being established.* . . . That banks ought to be the permanent depositories of the capital of the country, is an idea which no writer has hitherto entertained, and the silent operations of the Scotch banks have eluded observation. It has, in fact, always been hitherto considered *that the proper business of a bank was to issue notes and discount bills at short dates.* This is very strikingly exemplified by the clause in the Charter of the Bank of England, which restricts other banks to six partners." (Mr. Joplin then quotes the clause, and says—) "It is quite evident that the framers of the above clause considered the business pursued by the Bank of England the only proper banking. It appeared to them that preventing banks with more than six partners from issuing bills at short dates, or notes payable on demand, was altogether conferring on the Bank the privilege of exclusive banking as a public company. *This it did, no doubt, according to their definition of the term, but it still leaves the most important part of banking open to the public. There is at this moment no legal impediment to the establishment of joint stock companies for trading in real capital.* Both the letter and the spirit of the Charter has reference to the circulation of bills and notes alone. A bank which traded only in capital would not in the least trench upon the monopoly of the Bank of England, nor be any infringement of its charter." Thus Mr. Joplin has, as far as

we are aware, the merit of perceiving the loop-hole in the Act, by means of which, ten years later, the first joint stock bank was established in London

3. An attempt, in 1823, to gain the consent of the Bank of England to give up the privileges of their Charter, so far as to permit joint stock banks to be formed in the country, having failed, even though a bribe was offered, nothing further took place till 1826, when the disasters of the preceding year being very generally attributed to the improper management of the country banks, the Ministry were powerful enough to compel the Bank to give up its unjustifiable monopoly, and at length agreed to permit joint stock banks to be formed beyond sixty-five miles from the metropolis. The Statute 1826, c. 46, was passed for this purpose. Its chief provisions are—

I. That banks of an unlimited number of partners may be formed, and carry on all descriptions of banking business by issuing notes and bills payable on demand, or otherwise, provided that such corporations, or partnerships, should not have any house of business or establishment as bankers in London, or at any place within sixty-five miles of London ; and that each member of such corporation, or partnership, should be liable for all its debts of every description, contracted while he was a partner, or which fell due after he became a partner

II. No such banking company was to issue, or re-issue, either directly or indirectly, within the prescribed distance, any bill or note payable to bearer on demand, or any bank post bill, nor draw upon its London agents any bill of exchange payable on demand, or for any less sum than £50, but they might draw any bill for any sum of £50, or upwards, payable in London or elsewhere, at any period after date, or after sight

III. Such banking companies were expressly forbidden, by themselves or their agents, to borrow, owe, or take up in London, or at any place within sixty-five miles of London, any sum of money on any of their bills or notes payable on demand, or at any time less than six months from the borrowing thereof, but they might discount in London, or elsewhere, any bill or bills of exchange, not drawn by, or upon themselves, or by, or upon, any person in their behalf

IV. Before such a company began business, they were to make a return of the names and addresses of all their partners, and places for carrying on business, and the names of two or more of their partners, being resident in England, who were to be appointed public officers, and in whose names the company were to sue and be sued, which return was to be verified by oath. And they were required to make returns of all changes in their body

V. That all proceedings at law and in equity, civil and criminal, shall be taken by and against the public officers of the company. All decrees and judgments obtained against such public officers should be valid against all and every member of the company; and execution upon a judgment against the public officer might be issued against any member of the company. But that every such public officer or person, against whom such execution was issued, should be fully indemnified by the other members of the company; but that no execution should issue against any person more than three years after he had ceased to be a partner

VI. The Bank of England was authorised to establish branches at any place in England

VII. Such banking companies might issue unstamped notes upon giving certain securities to the Crown, to make true returns of the amount of their issues, and to pay the amount of stamp duty on them; and they were not obliged to take out more than four licenses for issuing notes in different places. For any breach of these provisions in neglecting to send returns, the penalty was £500 per week, and various penalties were enacted for false returns. And every breach of the provisions relating to their banking business subjected the company to a penalty of £50

VIII. The rights and privileges of the Bank of England were to remain intact and unaltered, except so far as varied by that Act.

4. Subject to these restrictions upon their business, this Act made no provisions regarding the constitution or capital of these companies. Each one was allowed to devise a constitution for itself, to name its own capital, and to make any public announcement regarding it that it pleased. The formation of joint stock banks under this Act proceeded very slowly at first, not more than four or five being formed in as many years. In fact, such banks could only be successfully formed by influential persons, and, of

course, each of these had already his own bank, which he would naturally be unwilling to injure by the formation of so powerful a rival. The first joint stock bank was formed at Lancaster, the next at Bradford, and another at Norwich, before any one was formed at one of the great manufacturing towns. It was not till the prosperous years of 1833-34-35-36, that any very remarkable increase took place in their numbers. In these years, however, they multiplied rapidly, more especially in 1836, when upwards of 40 were established in the spring

5. On the renewal of the Bank Charter in 1833, it was determined to take off the vexatious restriction of preventing banking companies making their bills and notes for less than £50, payable on demand by their agents in London. And they were required to keep weekly accounts, to be verified on oath, of the amount of their notes in circulation, and make a return to the Commissioners of Stamps of the average amount in circulation every quarter

6. It was at this time, as we have already noticed, that the discovery made in 1822 by Mr. Joplin, that the Bank Charter did not prohibit joint stock banks being formed in London, and carrying on their business in the method then adopted by the London Bankers, attracted attention, and, on the case being submitted to the law officers of the crown, they confirmed this view. The flank of the monopoly of the Bank of England, as we may say, being turned in this extraordinary and unexpected manner, excited much consternation and alarm in that body, and they requested to have this omission rectified, but Lord Althorp decidedly refused anything of the sort, and told them that the bargain was that their privileges should remain as they were, and he would not consent to any extension of them. To remove all possible doubts on the subject, a declaratory clause was inserted in the Bank Charter Act, expressly permitting the joint stock banks to be formed, provided they did not borrow, or take up in England, any sum or sums of money, on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof. This declaratory clause was not long in being acted upon; and soon after the Act was passed, measures were taken to constitute a joint stock bank in London. This was the London and Westminster

Bank, which has since been managed with such distinguished success

7. The enormous difficulties which must have attended the successful organisation of this great establishment may be conceived when we remember that it was not formed under the Joint Stock Banking Act at all, which had no force within sixty-five miles of London, but that it was nothing but an ordinary partnership at common law. One of the least of the inconveniences of this was that it could not maintain an action at law for the most trivial debt, without enumerating all and each of the partners, and the slightest mistake in the spelling of a single name would at that time have vitiated any proceeding. This bank was the largest common law partnership which has existed in England; and all the London joint stock banks which were formed before the Act, Statute 1844, c. 113, are nothing but common law partnerships. The excessive inconvenience attending this state of things, led to a bill being brought into Parliament to enable the London and Westminster Bank to sue and be sued in the name of its chairman. This was warmly opposed by the Bank of England, and by Lord Althorp. Nothing could be more paltry than the reasons alleged by him in opposition to it, but he was beaten by a majority of 141 to 35. The Government, however, had influence enough to have the bill thrown out in the Lords. The Bank being thus defeated, adopted the plan of making all contracts through the medium of trustees, and all the London joint stock banks had to adopt this plan, till the Joint Stock Banking Act of 1844. The other banks formed on a similar plan to the London and Westminster are, the London Joint Stock Bank, founded in 1836; the Union Bank, in 1839; the London and County Bank, in 1839; and the Commercial Bank, in 1840, which afterwards wound up its business

8. When the London and Westminster Bank was founded, it applied to have a drawing account at the Bank of England, and to be admitted to the Clearing House, and both requests were refused

9. A question, however, of very much greater importance soon arose. It was a settled question, that no partnership or

corporation consisting of more than six persons could accept bills, at any less date than six months, no matter whether they were a banking partnership or any other. It was clear, therefore, that the bank could not itself directly accept bills. But it did not appear that the words of the Act prohibited *trustees* accepting bills for a less date, on behalf of the Company. Nor, if trustees could accept, was there any thing to prevent them accepting by procuration. Consequently, there appeared to be this method open of circumventing the monopoly of the Bank of England. On the 21st February, 1835, the Bank of St. Albans drew a bill for £25 upon the London and Westminster Bank, payable twenty-one days after date; which, on the twenty-third, was presented for acceptance at the London and Westminster Bank, and was accepted in the following form—

Accepted,
At 36, Throgmorton-st., per procuration of
the trustees of the London and Westminster Bank.
J. W. GILBART, *Manager.*

10. The Bank of England moved for an injunction to restrain the Bank from accepting bills in this form, and, the case having been argued, the Court of Common Pleas held that it was an infraction of the Bank Charter Act of 1833, and the other Acts then in force respecting the Bank of England. Accordingly, the Master of the Rolls granted an injunction, restraining them from accepting bills at less than six months' date. The only result was, that the Bank paid the bills drawn upon it, without acceptance. The London and Westminster Bank being defeated in this manner, the London Joint Stock entered the lists against the Bank of England in another form. It agreed with a bank in Canada, that the latter might draw upon Mr. George Pollard, who might accept in his own name, and the London Bank agreed to find the funds to meet Mr. Pollard's acceptances, and such transactions were to be matters of account between the two banks. Mr. Pollard was not a shareholder in the London Bank: but he was their manager, and the transaction was substantially an acceptance by the bank. The House of Lords, however, declared this ingenious device to be illegal, as it was merely doing indirectly what they were forbidden to do directly. Thus ended the attempts of the London

Joint Stock Banks to free themselves from this monstrous oppression, from which they were not relieved till the Act of 1844

11. It was always held at common law that a man could not sue himself. Consequently, if the same individual was member of two partnerships, they could not go to law against each other. The consequence of this was, that no partnership could sue one of its members, or *vice versâ*, and if the same person had shares in two different banks, they could not have sued each other for any demands, or debts. The Statute 1838, c. 96, was passed to remedy this anomalous state of matters; it enacted that a banking company might sue, or be sued, by any of its members, exactly as if they were separate individuals; and by the Statute 1840, c. 111, this was extended to criminal cases, so that if a member of such a banking partnership steals or embezzles any property belonging to it, of any description, or shall commit any offence against it, he may be indicted, and convicted exactly as if he were a stranger

12. It being unlawful for spiritual persons to engage in any trading concerns, and such partnerships of which any of its members were spiritual persons, being held to be void and illegal, it was suddenly found that most of the banking companies in England were illegal, and all their contracts void, because some of their shareholders were clergymen. The Act, Statute 1841, c. 14, was passed to remedy this, and declared that such partnerships should not be illegal and void; and that their contracts should not be illegal and void, although some of their shareholders were clergymen

13. When the impediments to the formation of joint stock banks beyond sixty-five miles from London were removed in 1826, they were left perfectly free as to the provisions of their deeds of constitution, their nominal and their paid up capital, and all the details of management, nor were they obliged to publish any accounts. The public, consequently, were perfectly in the dark as to the magnitude and position of the bank, because they might advertise that their nominal capital was £1,000,000, divided into any number of shares. But no one had any means of knowing how many of the shares were taken and paid upon. Consequently, although the capital of the bank might be advertised in the

papers as £1,000,000, no one could tell whether it had *bonâ fide* £500 paid up

14. The first few joint stock banks having been apparently successful, naturally turned speculation into that channel. Numbers of new banks were started in all parts of the country, and many private bankers, fearing that the competition would be too powerful for them, united and formed themselves into joint stock banks. The rapid growth of these establishments led to much mismanagement, and many disasters, as might have been expected, and Committees of the House of Commons were appointed to inquire into the subject in 1836-37 and 1840-41

15. The great abuses which were revealed in the course of these inquiries determined Sir Robert Peel, who was supposed to be the minister who, *par excellence*, understood banking, to bring in a bill to regulate the future constitutions of these establishments. An Act, containing many elaborate provisions for this purpose, was accordingly passed, Statute 1844, c. 113. Fully admitting the enormous evils which this Act was intended to remedy, we will only say that a more unfortunate specimen of legislation, or one more entirely unsuitable to the nature of the business it related to, has not emanated from Parliament in recent times; and, being found to be an unmitigated nuisance, without any counterbalancing advantages, it was wholly repealed in 1857

16. We have already said that Sir Robert Peel's Joint Stock Banking Act, Statute 1844, c. 113, was found to be wholly unsuitable for the purposes it was intended, and totally repealed. This was done by the Act, Statute 1857, c. 49. The principal provisions of the Act are as follows—

I. Every Company formed under the Acts, Statute 1844, c. 113, or the Statute 1845, c. 75, were to register themselves before the 1st January, 1858, under the said Act, under severe penalties

II. Any Banking Company, consisting of seven or more persons, having a capital of a fixed amount, divided into shares also of a fixed amount, and legally carrying on the business of banking, before the passing of the Act, may register itself under this Act,

and then all provisions of any Act, letters patent, or deed of settlement, constituting or regulating the Company, as are inconsistent with the Joint Stock Companies' Acts, 1859, 1857, or with the said Act, are thereby repealed in regard to that Company

III. The above Banking Acts were then repealed as to any future companies, and as to existing companies, as soon as they were registered under this Act

IV. Seven, or more, persons might register themselves as a company, other than a limited company, under this Act, provided the shares into which the capital of the company is divided are not less than £100 each

V. The numbers of partners permitted in a private bank is extended to ten

17. The question of admitting the principle of limited liability into commercial partnerships in this country has long been debated with much acrimony. The old theory of the law was expressed by Lord Eldon, who said that a man who entered into a commercial partnership, rendered himself liable "to his last shilling and his last acre" for the debts of the company. And this, no doubt, was true, as far as regards ordinary private partnerships. But many great companies had been formed and incorporated, in which the privilege of limited liability was specially conferred upon them. A principle may be good when applied to ordinary traders, who are supposed all to take an active part in the business, and to be each and all parties to every transaction. But in the case of great companies it is rather different. In them the great majority of the partners are specially debarred from all knowledge of the real nature of the transactions, which are expressly left in the hands of a small committee. Now, as there are many great objects in commerce which can only be carried by means of a great company, and it was obviously desirable that they should be carried out, it has long been the practice in granting Acts to these companies to limit the liability of the shareholders. This was done in the case of the Bank of England itself; in railway and other companies, also, almost universally, in the charters granted to Colonial banks. But for a very long time the application of this principle to private partnerships in England was vehemently resisted. However, this resistance

was overcome in 1855, and in that year an Act was passed, Statute 1855, c. 133, to permit the formation of joint stock companies with limited liability. However, although the principle was conceded as to other companies, joint stock banks were still most jealously excluded, on account of some unintelligible distinction between their trading and other trading. In the Joint Stock Banking Act, of 1857, this exclusion was still strictly maintained. But the terrible examples of the failures of joint stock banks in 1857, at last compelled the Legislature to yield, and, in 1858, an Act was passed to extend limited liability to banks

The chief provisions of this Act, Statute 1858, c. 91, are—

I. So much of the last-mentioned Statute of 1857 as prevented banks being formed on the principle of limited liability was repealed

II. All banks which issue promissory notes are subject to unlimited liability, as far as regards their notes, for which they are to be liable, in addition to the sum for which they are to be liable to the general creditors

III. Every existing Banking Company may register itself under this Act, upon giving thirty days' notice, to each and all of its customers. Any customer to whom it may fail to send notice retaining his full rights, as before

IV. All companies formed, or registering themselves, under this Act, must, on the 1st February and 1st August, in each year, post up in a conspicuous place in its head office, and each branch, a statement of its liabilities and assets, made up in a form prescribed by the Act

18. When, in the course of less than thirty-five years, men had seen the whole of England shaken from end to end by those tremendous banking catastrophes, which seemed to be of periodical occurrence, they turned to the example of a country where, though there had been commercial difficulties, there never had been any banking disasters at all comparable to those of England. Many private bankers, it is true, had failed, but, except the Ayr Bank, up to 1826, no Joint Stock Bank in Scotland had failed. A very strong and general demand, therefore, arose for the Scotch system, many men thinking, that because the Scotch banks were joint stock banks, that, therefore, joint stock banking was all that was

requisite to attain security. When, therefore, the monopoly of the Bank was, to a certain extent, broken up in 1826, they expected to enjoy similar prosperity and safety to what Scotland had done, and when, after an experience of fourteen years, they found that the joint stock banks were scarcely more secure, and equally ill-managed as the private banks, great and bitter disappointment ensued, and joint stock banking became a bye-word of reproach

But, in truth, the causes of this are very evident. In Scotland the growth of banking has been extremely gradual. The first joint stock bank was founded in 1695, the second in 1727, the next in 1747, and, except a few country ones, no new one of any magnitude was founded till 1810. The consequence was that they gradually expanded with the increasing wealth of the country. They grew with its growth. Moreover, they correspondingly increased their capital. They acquired great experience, after committing many errors, which brought them to the brink of destruction. When the country required additional accommodation, it was done chiefly by throwing out branches from the parent establishments in the metropolis, so that they had all the experience and effective control of the superior officers. At present, there are but ten distinct establishments in the country, but these have 901 branches extending into every village in the kingdom, so that banking accommodation is ample and abundant. But these are all independent institutions, depending upon their own wealth and resources, and except, perhaps, in the case of a sudden run upon one of them, never seeking assistance from each other. To suppose that the English system of joint stock banking bore any similarity to this would be a most egregious fallacy, and it was this difference chiefly which led to those disastrous consequences which so completely falsified the expectations which were formed on the introduction of Joint Stock Banking into this country

19. There are, in truth, laws of nature in the industrial world, as well as in the moral and physical world ; and a systematic attempt to violate these terminates in disaster, as surely and as certainly as a systematic disregard of the laws of nature in the physical world. It may be a long time before the mischief is developed, nay, for a considerable time, the results may appear

to be beneficial, but, in the long run, the faulty principle is sure to produce its fruits—

> "Raro antecedentem scelestum,
> Deseruit pede pœna claudo."

Now, the great law of nature in the industrial world is **Free Trade.** There is nothing more certain in all the range of science, than that exclusive privileges in commerce are great violations of natural right. Trading monopolies are moral crimes. When Parliament sold to the Bank of England the exclusive monopoly of banking, **it sold what it had no right to sell.** It had no more right to sell to one body of persons the right of carrying on the business of banking than it had to sell a monopoly of the business of bookselling, or leather dressing, or any other trade whatever. This monopoly was as unjust and as pernicious as any of those which the Commons of Elizabeth and James I. had rebelled against. For a considerable period everything seemed to go well. The Bank of England rendered unquestionable services to the State—so might any other trading corporation in its line—and any other corporation might have done the same, if they had been permitted. But, nevertheless, the principle of the monopoly was utterly vicious; and Time, the Avenger, brought retribution at last. Injustice slumbers long, but it is sure to have its revenge at last. When, in the natural course of events, the commerce and wealth, and increasing spirit of enterprise, demanded an increased Currency, and, save for this monopoly, powerful and wealthy companies would have been formed in the metropolis, with ramifications all over the country, these unjustifiable privileges of the Bank prevented them. The Bank would neither supply this Currency itself, nor permit any other powerful company to do so. The consequence was that the duty of supplying the necessary Currency fell into the hands of any grocer, or tailor, or cheesemonger who chose to call himself a banker. Their power was unlimited. Then came 1793; then 1797; then the long series of disasters from 1810 to 1816; and then 1825

When these terrible lessons effected a breach in the monopoly of the Bank, it was only a partial one, a large portion still remained and exercised its deadly influence. When the new joint stock banks were formed they were merely local banks, all as dependent

on the Bank of England as the private banks had been. The Bank maintained its exclusive privileges within sixty-five miles of the metropolis; and this was the inherent vice of the English system of joint stock banking. Instead of being independent banks, strong in their own resources, and able of their own strength to withstand a shock, they were carried on upon the most dangerous principle of rediscounting the bills they bought, as indeed they could not help doing; thus their very existence depended upon the Bank of England and the London bill brokers

20. To suppose that this in any way resembled the Scotch system would be a gross fallacy; the English banks were forbidden to have establishments in the metropolis, which, of all others, is the best feature of the Scotch system. We have already pointed out that capital has a tendency to accumulate in certain districts of the country, where there is not sufficient demand for it, and in others there is a greater demand for it than the district supplies. Now, in the English system, the bankers in the former part of the country remit money to London to be held in deposit for them, and in the latter the bankers remit their bills to be rediscounted, and have the money remitted. Now, this legitimate operation, which is all done by one establishment in Scotland, requires three distinct and independent establishments to do it in England, and has given rise to that system of rediscounting which is so perilous and so objectionable. *But it is the natural result of the monopoly of the Bank.* Because, if it had not been for that, these three establishments would all have been under one control and management; under the present system they are three different and frequently conflicting interests

And this great violation of natural justice manifested its evil consequences in many other striking ways. No man of common sense now disputes the great principles laid down by the Irish Committee of 1804, the Bullion Report of 1810, and the authors of the Act of 1819, that the Paper Currency must be governed by the Exchanges. But long after the directors of the Bank of England had learnt this principle, and professed to govern her issues by the exchanges, they complained loudly and justly that their efforts to contract their own issues in an adverse exchange were counteracted by the issues of the country banks, and that as

soon as they withdrew their paper, the vacuum was immediately filled up by country issues. The reason is very manifest. The Bank of England, being situated at the heart of the exchanges, felt the danger, and saw the necessity of contracting her issues; the country banks, being situated at a distance, knew and cared nothing about the exchanges; nay, they continually professed that their issues had nothing to do with the exchanges, and naturally, whenever they saw an opening, issued their paper

Now, if it had not been for this iniquitous monopoly of the Bank, what would probably have been the condition of English Banking at the present day? There would have probably been thirty or forty great banks in the metropolis, each as great as the present Bank of England, with ramifications and branches all over the country. It would, in fact, have been the Scotch system on a much larger scale—one commensurate with the greater magnitude of the country. It would have been one great monetary nervous system. If this had been the case, they would have been acted upon immediately by the exchanges. London, being the centre of the exchanges, any drain of gold would have caused immediate measures of counteraction, which would have been propagated and enforced by the parent establishment all over the country. The tremor of the exchanges would have been instantly felt in every village in the kingdom. Thus, under a natural system, any effect in London would have vibrated through all England, and no country banks could possibly have acted in opposition to the ones in London. And this is the result to which the banking system of the country is slowly gravitating, and which it will ultimately assume. And if this, which is the natural system, had been allowed to grow up from the beginning, we believe that those great banking catastrophes never would have occurred. If any crisis had occurred, they would have stood by and assisted one another, but, when any shock did occur under the unfortunate system which has prevailed, the country banks have all depended on the Bank of England for their very existence

21. It is a melancholy reflection that these great changes cannot take place without producing much injury to private individuals. The very obnoxious law itself gave birth to the

business of a number of persons, which the removal of the shackles of monopoly must necessarily extinguish. In 1832, the banking witnesses felt that the establishment of joint stock banks would be fatal to the existence of many of the private bankers, and some went so far as to wish to prohibit them on that account. Since these 44 years have passed, we have undergone a mighty revolution of opinion in commercial matters. The ideas of that age are now as antiquated and obsolete as those of the men before the flood. Then, the general public was supposed to be made for the benefit of each separate monopoly, and interest, and class. But now that is all changed. It was akin to the great Ricardian heresy, that cost of production regulates value. Every interest which had bestowed labour and expense in making productions, was allowed to hold the public in thraldom. The value of the law appeared to be measured by the quantity of labour bestowed in mastering its intricacies and technicalities. Obstinate pedants maintained it gravely as a valid argument for upholding all the old abuses of the law, that great and eminent men had bestowed so much labour and unhappy diligence in accumulating so much legal lore. What, said they, is the fruit of so much ingenuity to be thrown away? In fact, they determined upon loading the public with all sorts of oppression, for the sake of preserving a fictitious value to so much misdirected industry

22. But all these ideas are now past and gone. They were congenial to times when education was narrowed to a small and select circle, and the general public was in a state of helpless and inert ignorance. But they have all been swept away before the advancing tide of public intelligence. It is now well settled that the community in general is not made for the benefit of agriculturists, or manufacturers, or lawyers, or bankers, or any set of men whatever, but they are for the benefit of the country. It is the wants of the community which must give rise to the value of their occupations; and all who engage in them must regard them as purely commercial speculations. The wants and requirements of all are not to be restricted or moulded by legislation to be subservient to the advantages of a few, but the interest of particular classes must be subordinate to the necessities of all

23. We have carefully and purposely abstained throughout this work from making any invidious comparison between the merits of private and joint stock banking. All we say is, let each of them have full and fair play, and let the public generally choose which they think most suitable for their purpose. Some will prefer one, and some the other. Each then will find its own level; and the public wants will maintain in existence a sufficient supply of each. But it is impossible to be blind to facts. It is impossible not to see that the days of the private bankers, generally, in England, are numbered. A few of the most eminent may long continue to flourish; houses which are an honour to commerce, and present all the security and power of any joint stock bank. But it is impossible not to see that the force of nature is against them. The connections of the joint stock banks are so numerous, and ramified through all ranks of society, that inevitable decay awaits the great bulk of private banks. They will maintain their hereditary and long-established connections for some time to come, but most of the new business will go to the joint stock banks. Every case of failure and mismanagement of a private banker will tend to shake the credit of the majority of the remainder. But no failure of a joint stock bank can destroy the system, because, however much the shareholders may suffer, the customers and depositors will seldom suffer

24. In the session of 1875 a circumstance occurred which brought out very clearly the chaos of absurdity which the banking laws of England present

We have shewn that it has always been the cardinal principle of the Scotch Banks to hold very large reserves in London: and, as differences among them are settled by Drafts upon London, London is, in fact, the pivot upon which the system rests. A change in the mode of business of the Scotch merchants still further increased the London business of the Scotch Banks. Thirty years ago Scotch merchants very rarely accepted bills payable in London, or thought of having London accounts. But now it has become quite the exception for Scotch merchants of Glasgow, Dundee, and other great commercial cities, to accept a bill payable in Scotland. Their remittances from abroad come home in the shape of bills drawn upon London, and, of course,

payable there. Naturally, therefore, Scotch merchants domicile their own acceptances where their own resources are available. Scotch merchants, therefore, have now an absolute necessity for a London account, and if they cannot get this convenience from their own bank they must go to a London banker. The business of the Scotch banks with their London agents has become enormous. It was said that one Bank passed £60,000,000 a year through its London agency. The Scotch banks have found it necessary, in their own self defence, and to preserve their own custom, to turn their London agencies into branches. The National Bank of Scotland opened a branch in London in 1865, and the Bank of Scotland in 1872. The charter of the Royal Bank did not permit it to bank out of Scotland, but, in 1873, with the full consent of the Bank of England, and the English bankers, it obtained an Act of Parliament (36 and 37 Vict., c. ccxvii.) to enable it to open a branch in London, and to carry on banking there, except only issuing Notes. The bill was carried through Parliament by Mr. Goschen. This branch was opened in August, 1874. These are the only Scotch Banks which had then opened branches in London. These branches were opened without evoking any open hostility from the English bankers. But, in 1873, in consequence of the increasing connection between Glasgow and Cumberland, the Clydesdale Bank opened three branches in Cumberland, at Carlisle, Whitehaven, and Workington

This invasion of the English provinces by a Scotch Bank excited the vehement opposition of the English bankers, both private and joint stock, and in April, 1875, Mr. Goschen, the very gentleman who had taken charge of the bill of the Royal Bank in 1873, at their instance brought in a bill to extrude the Scotch banks from England. The injustice of this proceeding was manifest, because it was directed solely against the Scotch banks, whereas the National Bank of Ireland has not only a Head Office, but also eight branches in different parts of London: but not a word was said against the Irish Banks

Mr. Stephen Cave, on behalf of the Government, moved an amendment to the second reading of Mr. Goschen's Bill, that "a Select Committee should be appointed to consider and report upon the restrictions imposed and privileges conferred by Law on bankers authorised to make and issue notes in England, Scotland,

and Ireland, respectively," which was carried without a division, and Mr. Goschen's bill remains in suspension—in limbo—neither pressed nor withdrawn

This Committee began its sittings on the 19th of April, 1875, and took evidence during 21 days, and reported the evidence taken to the House, but made no report on the evidence taken, and recommended its reappointment in the next session. But the Committee was never reappointed

The primary object of the Committee was to ascertain the legality or the contrary of the establishment of the Scotch branches in London. It examined Mr. Fitzjames Stephen, Q.C., and Sir Henry Thring, C.B., Parliamentary draughtsman to the Government, personally, as to the state of the Law: and besides that they had the written opinions of Sir James Scarlett (Lord Abinger), Sir Edward Sugden (Lord St. Leonards), Mr. Richards, and Mr. Roundell Palmer (Lord Selborne)

We shall commence by stating the opinions of these several Counsel on the point

Mr. Stephen gave it as his opinion, among other points, that —"No joint stock bank which issues notes anywhere, except the joint stock banks in England and more than 65 miles from London, may carry on business in any part of England"

He considered that all "foreign banks whatever, including under the name 'foreign' not only continental banks, but British banks out of England, that is, Scotch, Irish, and colonial banks, are forbidden by the various Acts of Parliament to establish themselves in any part of England." (Q. 206)

He denied that the Bank of Amsterdam, for instance, could open a branch in London. (Q. 207.)

Mr. Stephen admitted that he had never turned his attention to the subject before, and that he had merely been instructed to look at the matter on behalf of the English bankers some two days or a week previously; and that he was somewhat biassed by the side on which he was called. He also said that he derived most of his information from the memorandum of Sir Henry Thring, to be mentioned immediately

Sir Henry Thring differed so far from Mr. Stephen, that he thought the Scotch Banks might open branches in the provinces beyond the 65 miles limit, though he spoke somewhat doubtfully

(Q. 404, 406). But he agreed with Mr. Stephen that it is illegal to open branches in London or within the limit of 65 miles

He also presented a memorandum to the Committee containing frequent references to the second edition of this work; and stating certain general conclusions he had arrived at. "Such being the circumstances of the case, the first question is whether it is or is not legal for Scotch Joint Stock Company banks of issue to establish branches in England. In answer to that question it is submitted that the prohibitions contained in the Acts of 1697 and 1708, and repeated in 1800, are still in force, with the special modification introduced by the Act of 1826, and are perfectly general in their terms, and extend to Scotch banks of issue as well as to country banks of issue in England, and, consequently, that, with the exception of the Royal Bank of Scotland, which is empowered by Act of Parliament to have a branch in London, all other branches belonging to Scotch banks of issue in London, or within 65 miles thereof, are illegal. On the other hand, there does not appear to be any legal prohibition against the Clydesdale Banking Company establishing their branches in Cumberland, being at a distance of more than 65 miles from London"

Sir Henry Thring then presented some suggestions as to the policy of expelling the Clydesdale Bank by law from Cumberland: into this consideration we shall not follow him, as, of course, every one is entitled to have his own opinion as to expediency and policy

The Author of this work having been expressly selected by the Royal Commissioners for the Digest of the Law to declare the Law on all points respecting to Bank Notes, and, moreover, having been frequently referred to in the memorandum presented by Sir Henry Thring, and being perfectly satisfied that there was no foundation whatever for the doctrines laid down by Mr. Stephen and Sir Henry Thring, applied to the Chancellor of the Exchequer to be heard before the Committee, but the Chancellor refused to hear him. As the opinions given by these learned gentlemen were calculated to strike at such wide-spread interests, he wrote a letter to the *Daily News*, which appeared in that paper on the 8th May, 1875, shewing that the opinions expressed by these gentlemen was quite destitute of any foundation

There were also published, in the appendix, the opinions given

in 1833 by Sir James Scarlett, Sir Edward Sugden, and Mr. Griffiths, on the question whether Joint Stock Banks of Deposit could be established in London previously to the clause in the Bank Charter Act of 1833. All these three gentlemen held that they could not; they maintained that the words of the monopoly clause of the Act of 1697, and subsequent Act, included Banks of Deposit as well as Banks of Issue. But the legal adviser of the Government, Sir John Campbell, held exactly the reverse: he held that the monopoly of the Bank of England was exclusively restricted to issuing notes, and that it was perfectly legal at Common Law to establish Joint Stock Banks of Deposit; and upon that opinion the Government of the day acted, and introduced the declaratory clause in the Bank Charter Act of 1833

In 1855 the Clydesdale Bank took the opinion of Mr. Roundell Palmer (now Lord Selborne) as to whether it was legal for them to open branches in London and other parts of England, and carry on banking business, except only issuing notes; and Mr. Palmer gave it as his opinion that it was perfectly legal for them to do so. The opinion of Lord Selborne, therefore, exactly agreed with the opinion published by us in the *Daily News* of 8th May, 1875

We have already, in Chap. xiii., § 17, explained fully the strict law of the question; and shewn that any Bank, in any part of the world, is perfectly entitled to open branches in London, or any part of England, so long as it does not issue notes in **England,** payable on demand, or at any less time than six months after demand

Since then, all the Banks in Scotland, except only the local ones at Aberdeen and Inverness, have opened branches in London; and the question is now finally set at rest, and will never be mooted again

25. In 1858, as we have seen, an Act was passed to enable Banks to adopt the principle of limited liability. But it was adopted in very few instances; as Banks do not readily change their constitution; and they thought that such a change would probably endanger their credit. But the catastrophe of the City of Glasgow Bank, in 1878, created such consternation among the shareholders of banks that they made determined efforts to compel

their Directors to adopt the principle of limited liability. This was the case, especially in Scotland, where investment in Bank shares was recognised by the Law Courts as a legitimate investment of trust funds. But the Trustees were personally liable for all calls and losses sustained by the banks, as well as to make good the losses to their clients

To facilitate this the Act, Statute, 1879, c. 76, was passed, which enacts—

I. That any unlimited Company may increase the nominal amount of its Capital by increasing the nominal amount of its shares

Provided that no part of such increased Capital shall be capable of being called up except in the event of and for the purposes of the Company being wound up

In cases where no such increase of nominal Capital is made, the Company may provide that a portion of its uncalled Capital shall not be capable of being called up, except in the event of and for the purposes of the Company being wound up

II. A limited Company may declare that any portion of its still uncalled for Capital shall not be capable of being called up except in the event of and for the purpose of the Company being wound up

III. All Banks are subject to unlimited liability with respect to their Notes in circulation

The three senior chartered Banks were created Corporations before the Crown was empowered by Act of Parliament to create trading corporations with unlimited liability : therefore, they had always been limited Banks ; and did not require to avail themselves of the Act of 1879 to become so. All the other Scotch Banks which were corporations with unlimited liability, without loss of time registered themselves as limited companies, under the provisions of the Act of 1879 : and almost all the Joint Stock Banks in England have done the same : and the result has been to shew that the fears which had been entertained that limited Banks would enjoy less credit than unlimited ones have been perfectly groundless

CHAPTER XVIII

ON THE BUSINESS OF BANKING

1. In modern practice a Banker may stand in *four* relations to his customer—

1. As the **Purchaser** from him of specie or debts
2. As his **Agent, Trustee,** or **Bailee** of his specie and valuable securities : *i.e.*, securities for money and convertible securities ; termed Banking Securities
3. As the **Pawnee** of the same
4. As his **Warehouseman** for plate, specie, jewels, deeds, &c., not being Banking Securities

On the Relation of a Banker to his Customer as the **Purchaser** *from him of Specie, or Specie and Debts*

2. The first of these cases is the ordinary one where a customer opens an account with a banker by paying in money to his account. The customer cedes the property in the money to the banker, and in exchange for it the banker writes down a Credit in his books to his customer's account. This Credit is a **Right of action** which the customer has to demand an equal amount of money from the banker at any time he pleases. This Credit, or Right of action, is, in modern banking language, termed a **Deposit.** It is also termed an **Issue,** from *exitus ;* because by creating this Credit the banker has *issued* a Right of action against himself. The transaction is, therefore, a sale—an exchange of Money for a Debt : and the banker and his customer stand to each other in the common law relation of Debtor and Creditor

It is also part of the fundamental contract between banker and customer that the customer may transfer his Debt, or Right of action, to any one else he pleases, and the transferee has the same

Right against the banker that his original creditor had. If the transferee is also a customer of the same banker, he may either demand the money; or he may direct the banker to transfer the credit from the transferor's account to his own: and this transfer of the Credit is in all respects equivalent to a payment in money

It must be carefully observed that in such a case the banker is not in any way the **Trustee** of his customer's money. He has absolutely bought the money, and may apply it exclusively to his own private benefit or purposes, in any way he pleases: and his customer has no legal ground of complaint against him. If, therefore, the banker loses the money in unfortunate speculations, the customer is only entitled to receive a portion of the banker's property, rateably with other creditors

It is not unusual for persons to say that they have so much "money" at their banker's. This expression, however, is entirely erroneous. A customer has no "money" at his banker's: he has nothing but a *Right of action* to demand so much money

But a Credit in a banker's book is so universally considered as "money," that if a person makes his will bequeathing "all his ready money," "all his debts," "all his moneys," the sum standing at his credit in his banker's books has been held by numerous decisions in equity to pass under these designations

The relation between banker and customer being strictly that of Debtor and Creditor, if a customer were to leave a balance in his banker's hands for more than six years, without operating on it, the Statute of Limitations would take effect, and the banker might, if he chose, refuse to pay it

Formerly there were three ways in which the creditor of a banker might transfer his Debt, or Right of action to another person—

1. He might give a verbal direction to the banker to pay or transfer the credit to some one else. This, as far as we can ascertain was the usual practice with the Greeks: it was also sometimes done at Rome: and it appears also to have been sometimes done in the days of early English banking

But in modern English practice these Credits, or Debts, are always transferred by means of written documents

2. Either the banker gave the customer his own promisssory notes, payable to bearer, which he might transfer to any one else

3. Or, the customer might write a Note to his banker directing him to pay the money to some one else. Such a Note was formerly termed a Cash Note; in modern commerce it is termed a **Cheque**

It is obvious that these paper documents do not create any new liability: the liability was created when the banker first wrote down the Credit in his books: the paper documents are only made for the purpose of transferring a liability which has been previously created

For various reasons which need not be stated here, the Legislature has deemed it against the public interest that bankers should be allowed to issue their own Notes. By the Bank Charter Act of 1844, bankers who were then issuing their own notes were allowed to continue doing so to a certain limited amount. But no banker was allowed to begin to issue notes after the 6th of May, 1844: consequently, at the present day, except the small amount of bankers' notes which still survive, Banking Credits can only be transferred by means of Cheques

The case we have been considering is the simplest between a banker and a customer, and is called a *Drawing* or a **Current Account**

Some celebrated banks in Europe, such as those of Venice, Amsterdam, Hamburgh, Rotterdam, &c., never went any further than this. They simply bought specie from their customers, and, in exchange, gave them Credits for the amount in money of full weight. Thus they only exchanged Credit for Specie, and Specie for Credit. The Credit they created was exactly equal to the Specie they bought. It is evident that such banks could make no profits. These Credits were called *Bank Money*

The Post Office acts as a Bank in two ways—

1. It receives deposits as a Savings' Bank, and pays an interest for their use

2. In exchange for money it grants Post Office Orders, payable at a particular Office, or Postal Orders, payable at any Office. This is genuine banking

When "banking" was first introduced into England the usual rate of interest was 10 per cent., and bankers allowed their cus-

tomers 6 per cent. on their balances. But with the reduction of the usual rate of interest, chiefly produced by the increase of banking and the institution of the Bank of England, these halcyon days for customers soon passed away. And when the usual rate of interest was reduced to 3 per cent., it became impossible for bankers to allow interest on current accounts. Some Joint Stock Banks allow a small interest on the condition that the customer's balauce does not fall below a fixed limit for a certain period

It had always been a fixed principle of the Banks in Scotland to allow interest on daily balances : but this has just been abolished

But bankers receive money placed with them for fixed periods, or only repayable after a certain notice, upon which they allow interest, and grant receipts. These documents are termed *Deposit Receipts*

It is part of the fundamental contract between banker and customer that a customer can transfer his Right of action on a current account to any one else he pleases : but Deposit Receipts are only given payable to the customer himself : and so by the common law these Deposit Receipts were not transferable so as to allow the transferee to sue the bank in his own name. But the transferee might always sue the banker in equity. By the Supreme Court of Judicature Act it is declared that wherever the rules of Equity conflict with those of the Common Law the rules of Equity shall prevail : consequently, a Deposit Receipt is now as transferable as a Bank Note or a Cheque : just as a Bill of Exchange no longer now requires the words " or order " to make it transferable

A most important branch of banking consists in giving customers bills or drafts on distant towns in the same country, or on foreign towns, called Bills of Exchange. This, as we have already said, was originated by the Roman bankers. A " foreign banker " is a banker who, in exchange for money, gives his customer bills upon foreign towns, payable at the exchange of the day

3. Bankers who merely receive money on current accounts can, of course, make no profits by such customers. To make profits they require a different set of customers

It is the custom in trade to allow three months' credit on all transactions. In fact, a three months' bill is often designated in trade as "ready money," and for payment in real ready money a discount is allowed. But a three months' bill is inconvenient for many purposes in trade: traders want real ready money. They accordingly go their banker and offer him this three months' bill for sale. If the banker thinks the bill a good one he buys it from his customer: that is, he buys the customer's debt or right of action against another person

But when he buys this debt he does not do so with "money" as is so often supposed. He buys this debt exactly in the same way as he bought money from his former set of customers—with his own **Credit.** He writes down to the credit of his customer the full amount of the bill; and at the same time he charges to his debit the amount of profit agreed upon. And exactly as in the former case the Credit he creates in his customer's favour is termed a **Deposit**

The profit agreed upon and subtracted from the amount of the bill is termed **Discount:** and to *Discount* a Bill means to buy a Right of action which one person has against another

When a banker discounts a Bill it is a complete *Sale* of the Debt. He buys all the Rights which his customer had against all the parties to it. He makes his customer *indorse* it. The effect of this is, that his customer becomes security for the payment of the bill. The banker first demands payment from the acceptor, or principal debtor, and if he does not pay it at maturity, he must within twenty-four hours give notice of the dishonour of the Bill to all the other parties to it. If he fails to do this, they are all discharged: but the acceptor still continues liable

Having thus bought the absolute Property in this Right of action, the banker may, of course, sell it again to any one he pleases: this is termed *re-discounting* the bill: and if he becomes bankrupt the bill becomes the property of his assignees

In the loose language in which Economic subjects are usually treated, it is commonly said that when a banker discounts a bill for a customer, he makes him a *loan* on the security of the bill. This, however, is a complete misconception of the nature of the transaction. If the banker merely made a *loan* to his customer on the security of the bill, it would be the *customer's* duty to

repay the money at the time fixed : just as in all other *loans* it is the duty of the person receiving the money to repay it. But a banker who discounts a bill never, in the first instance, demands payment from his own customer : he demands payment from the *acceptor :* and if the acceptor pays it duly, the customer never hears of, or sees, the bill again. It is only in the event of non-payment by the acceptor that the banker comes upon his own customer as security

The transaction is in reality an exchange, or Sale of Debts : the banker buys a Debt, payable at a future time, by creating a Debt in his customer's favour, payable on demand. This Debt is termed a **Deposit :** hence a banker does not make an advance out of his Deposits, as is so often alleged ; but he makes an advance by **creating** a Deposit

But a banker does, also, often make a **Loan** to his customer. If a customer wants an advance, the banker discounts his customer's Promissory Note ; either with or without other parties as joint securities. He does this in exactly the same way as he discounted a Bill. He buys the Promissory Note from his customer, and in exchange for it he creates a Credit in his favour in his books, which is termed a **Deposit.** In this case the customer is the principal debtor ; and is bound to repay the Loan, and the other parties are only called upon in the event of the customer failing to do so

In creating, however, these Credits, or Deposits, the banker must always have strict regard to the quantity of specie he possesses : so as to meet all demands for payment at once : if his specie gets too low, from an unusual demand, he must sell, or re-discount, some of his securities, and so provide a fresh supply of cash

All "banking" profits are made exclusively by means of creating these Credits, or Deposits : and, of course, the more Deposits he can create, the greater will be the amount of his profits. We have already, in chapter vi., § 9, explained the different methods by which these Credits can be utilised without demanding payment in money

These banking Credits are, for all practical purposes, the same as Money. They cannot, of course, be exported like money: but for all internal purposes they produce identically the same effects as an equal amount of money. They are, in fact, **Capital created** out of **Nothing**

What the amount of Banking Credits may be in England we have no means of knowing: for many banks in England publish no accounts. But in Scotland we bave a complete account of banking statistics: and, by the official returns, it appears that in 1884 there were, in Scotland, £108,582,418 of Banking Credits maintained on a basis of £4,226,258 in cash: which was, for all practical purposes, an augmentation of £104,356,160 to the monetary resources of the country. It is usually estimated that the commerce of Scotland is about one-tenth part of the commerce of the whole kingdom. We may, therefore, estimate roughly that the total amount of Banking Credits in this country exceeds £1,000,000,000

4. Thus the student must carefully observe that in the technical language of commerce a "banker" is a trader who issues his own **Credit**, in various forms, for Money and Debts. This species of business, no doubt, originated with the money changers: but yet money changing is not "banking." Nor are "bankers" money lenders: in all cases whatever they issue nothing but their own **Credit**, whicb, however, is exchangeable for money. Exchange operations consist in dealing in specie and bills: dealings in bills are termed "Banking" operations. Mr. Norman even called drawing an ordinary bill a "banking expedient"

On the Relation of a Banker to his Customer, as his **Agent**, *or* **Trustee**, *or* **Bailee** *of* **Specie**, *and Banking Securities*

5. Besides, however, the simplest and most ordinary relation between bankers and their customers, as exchangers of Money and Debts, bankers do undertake trusts, and enter into fiduciary relations with their customers. They receive sums of money, which are specifically directed by their customers to be appropriated to some special purpose, as well as securities, and other valuable property, such as Stock, Shares, &c., to receive the

dividends, &c., on behalf of their customers ; they receive Bills of Exchange on behalf of their customers, and collect them for their customers, in exactly the same manner as they do for themselves, and are answerable to them for any loss incurred through any negligence in not complying with the known usages of commerce. Bills of Exchange, Stock, Shares, Exchequer Bills, &c., are called Banking Securities

In such cases as this, the property in these valuable securities does not pass to the banker ; he is the mere **Agent, Trustee,** or **Bailee** of his customer, and he has to obey his specific instructions in each case, and if he appropriated them to his own use, it would be criminal. Moreover, in the event of his bankruptcy, the property in such things would, manifestly, not pass to his assignees

The temptation to a banker to use, for his own benefit, the valuable securities entrusted to his care, is so great in times of commercial pressure, that it has been enacted, by the Larceny Act, 24 & 25 Vict. (1861), c. 96, s. 75—"As to frauds by Agents, Bankers, or Factors.—75. Whosoever having been entrusted, either solely or jointly with any other person, as a Banker, Merchant, Broker, Attorney, or other Agent, with any Money, or Security for the payment of Money, with any direction in writing to apply, pay, or deliver such Money or Security, or any part thereof respectively, or the proceeds, or any part of the proceeds of such Security, for any purpose, or to any person specified in such direction, shall, in violation of good faith, and contrary to the terms of such direction, in any wise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so entrusted, such Money, Security, or Proceeds, or any part thereof respectively : and whosoever having been entrusted, either solely or jointly with any other person, as a Banker, Merchant, Broker, Attorney, or other Agent, with any Chattel or valuable Security, or any Power of Attorney for the sale or transfer of any share or interest in any Public Stock or Fund, whether of the United Kingdom, or any part thereof, or of any Foreign State, or in any Stock or Fund of any Body Corporate, Company, or Society, for safe custody, or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall, in violation of good faith, and contrary to the

object or purpose for which such Chattel, Security, or Power of Attorney shall have been entrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he should have been so entrusted, such Chattel or Security, or the proceeds of the same, or any part thereof, or the share or interest in the Stock or Fund to which such Power of Attorney shall relate, or any part thereof, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

On the Relation of the Banker to his Customer as **Pawnee** *of Banking Securities*

6. In the first of the relations between the banker and his customer above described, the banker was the absolute purchaser of the Money and Securities of his customer, so that he might do what he pleased with them; in the second he was merely his customer's agent, and it is highly penal for him to appropriate to his own use any of his customer's securities. A relation intermediate between these two frequently exists, in which securities are deposited by a customer with his banker; the absolute property in them remains with the customer: but he obtains a loan or advance of money from his banker on their security, which, when he pays off, the full property and possession of his securities reverts to himself. The banker thus becomes the **Pawnee** of his customer's securities, and while he is so, he acquires certain Rights over them, though not exactly a Property in them, and it is out of such cases as these that the most difficult and abstruse questions between bankers and their customers arise

It has always been the custom that if a banker makes an advance, or a loan, to a customer, on the security of bills, &c., deposited with him, he has the right to re-pledge or sell so much of these securities as is necessary to satisfy his own claim. And this custom is expressly sanctioned in the last recited clause, which says that nothing in the clause shall restrain any banker "from selling, transferring, or otherwise disposing of, any Securities or

Effects in his possession, upon which he shall have any Lien, Claim, or Demand, entitling him by law so to do, unless such Sale, Transfer, or other Disposal shall extend to a greater number or part of such Securities or Effects than shall be requisite for satisfying such Lien, Claim, or Demand '

This principle has always been held to apply when a banker makes a loan on the pledge of these securities. It is also held to apply where a customer, having an ordinary account with his banker, has overdrawn it and become indebted to him : the banker has the right to retain all *banking* securities deposited with him by his customers until his debt is paid off

7. Questions of great nicety frequently occur between bankers and their customers, and, in the event of the bankruptcy of either or both of them, their assignees, respecting the property in bills placed by customers in the hands of their bankers for various purposes

It is a very common practice for customers to place in the hands of their bankers the bills they receive for the purpose of collection

This is very convenient for the customer. By placing these bills in the hands of his banker he frees himself from all anxiety and trouble regarding their safe custody or preservation for payment. The banker is bound, as his customer's agent, to present them for payment, and carry them to his customer's credit as soon as they are paid. And if he fails to do so, and any loss occurs through his neglect of the usages of trade, he is liable to his customer

For the sake of convenience it is usual to note down the amount of such bills on the proper day, in the customer's account, in a column "short of" or before the column for cash. Hence these bills are said to be "entered short," and the banker is said to hold such bills "short"

This entry is a mere memorandum to remind the banker that he has such bills to collect for his customer on a certain day. The sum is in no way placed to his customer's credit : and the bills so "held short" are the exclusive property of the customer, which he is entitled to demand back at any time previous to his bankruptcy

But in the case of the customer's bankruptcy the banker must not deliver up his "short bills" to him, as all his property has vested in his creditors

As "short bills" are merely intrusted to the banker for the purpose of collection, if he appropriated them to his own use, by selling or pledging them, he would be indictable under the Larceny Act, 24 & 25 Vict. (1861), c. 96, s. 76

The course of dealing between bankers and their customers in such cases often creates perplexity

The point to be ascertained is, whether at the time of the bankruptcy the relation between the banker and his customer was that of Principal and Agent, or that of Debtor and Creditor. That is, whether the property in the bills can be ascertained to have passed from the customer to his banker

In some country banks it is the custom to enter the amount of such bills in the cash column, and to permit the customer to draw against the amount. But this is a matter of comity, and does not transfer the property in the bills to the banker. They are only held as collateral security against the advance, and are not discounted. The customer, or his assignees, are entitled to demand back the bills, *in specie*, if the account shows a credit balance without them

> *Giles* v. *Perkins*, 9 East, 12. *Ex parte Dumas*, 1 Atk., 233. 2 Ves., sen., 582. *Ex parte Oursell*, Amb., 297. *Thompson* v. *Giles*, 2 B. & C., 422. *Ex parte Sargeant*, 1 Rose, 153. *Jombart v. Woollett*, 2 My. & Cr., 389. *Ex parte Bond*, 1 M. D. & De G., 10. *Ex parte Armitstead*, 2 Gl. & J., 371. *Ex parte Rowton*, 17 Ves., 426. *Ex parte Smith*, Buck., 355. *Ex parte Frere*, Mont. & Mac., 263. *Ex parte Sollers*, 18 Ves., 229. *Ex parte Pease*, 19 Ves., 25. *Ex parte Twogood*, 19 Ves., 227. *Ex parte Edwards*, 2 M. D. & De G., 625. *Zinck* v. *Walker*, 2 W. Bla., 1154. *Parke* v. *Eliason*, 1 East, 544

But if the course of dealing shews that the customer intended the banker to consider and deal with the bills as his own property, they will not be recoverable

> *Ex parte Oursell*, Amb., 297. *Bent* v. *Puller*, 5 T. R., 494. *Tooke* v. *Hollingworth*, 5 T. R., 218. *Bolton* v. *Puller*, 1 B. & P., 539

The bills cannot be held to have become the property of the banker unless the customer has an immediate Right of action

against him for the full amount, less the discount; and the banker has acquired a Right of action against all the parties to the bill

On the relation of a Banker to his Customer as **Warehouseman** *of his Plate, Jewels, Specie, Deeds, Securities, &c.*

8. Besides receiving money and securities from their customers in the way of banking business, bankers also receive from their customers chests of plate, jewels, specie, deeds, securities, &c., as mere **Deposits**, for the sake of safe custody in their strong rooms. In this capacity they act simply as **Warehousemen** for their customers, and no property of any description passes to them in the goods deposited

The banker makes no charge for such a deposit, he is, therefore, a gratuitous Bailee: and he is not liable for any loss that may occur by the dishonesty of a clerk or servant, provided that he was not aware of his servant's dishonesty, and that he exercises that degree of care and diligence which men of prudence would do in their own affairs

Giblin v. *McMullen*, L. R., 2 P. C., 317; 38 L. J., P. C., 25

A banker misappropriating any such deposits to his own use would be indictable under the Larceny Act, 24 & 25 Vict. (1861), c. 96, s. 75

On the **Appropriation** *of* **Payments**

9. 1. If a debtor owes several debts to a creditor he may appropriate or impute any payment he makes to whichever of the debts he pleases, if he declares his intention at the time of making the payment (*a*)

And such an appropriation may be implied from circumstances, even though not expressly declared (*b*)

(*a*) *Anon.* Cro. Eliz., 68. *Pinnel's case*, 5 Co., 117b. *Peters* v. *Anderson*, 5 Taunt., 596. *Malcolm* v. *Scott*, 6 Hare, 570. *Smith* v. *Smith*, 9 Beav., 80. *Waugh* v. *Wren*, 11 W. R., 244. *Ex parte Rafael del Sar*, 1 De G. & J., 152

(*b*) *Shaw* v. *Picton*, 4 B. & C., 715. *Young* v. *English*, 7 Beav. 10. *Stoveld* v. *Eade*, 4 Bing., 154. *Waters* v. *Tompkins*, 2 C. M. & R., 723. *Knight* v. *Bowyer*, 4 De G. & J., 619. *Pearl* v. *Deacon*, 24 Beav., 186. *Marryats* v. *White*, 2 Stark., 101. *Newmarch* v.

Clay, 14 East., 239. *Taylor* v. *Kymer*, 3 B. & Ad., 320. *Wright* v. *Hickling*, L. R., 2 C. P., 199. *Nash* v. *Hodgson*, 6 De G. M. & G., 474. *Henniker* v. *Wigg*, 4 Q. B., 792. *Williamson* v. *Rawlinson*, 10 J. B., Moore, 362. *Pease* v. *Hirst*, 10 B. &. C., 122. *Wickham* v. *Wickham*, 2 K. & J., 478

2. If the debtor makes no appropriation at the time of the payment, the creditor may appropriate it to whichever debt he pleases (*b*)

The appropriation is not complete until he has notified it to his debtor, but when it is once notified he cannot revoke it (*c*)

The creditor cannot appropriate the payment to an illegal debt (*d*)

But he may do so to one upon which the remedy only is barred by a Statute, or by a legal technicality (*e*)

If one debt be certain, and another doubtful or uncertain, he must appropriate it to the certain debt (*f*)

(*a*) *Goddard v. Cox*, 2 Stra., 1194. *Bloss* v. *Cutting*, 2 Stra., 1194. *Hall v. Wood*, 14 East., 243n. *Kirby* v. *Duke of Marlborough*, 2 M. & S., 18. *Hutchinson* v. *Bell*, 1 Taunt., 558. *Dawson* v. *Remnant*, 6 Esp., N. P. C., 24. *Peters* v. *Anderson*, 5 Taunt., 596. *Grigg* v. *Cocks*, 4 Sim., 438. *Bosanquet* v. *Wray*, 6 Taunt 597. *Nash* v. *Hodgson*, 6 De G. M. & G., 474

(*b*) *Philpott* v. *Jones*, 2 A. & E., 41. *Simson* v. *Ingham*, 2 B. & C. 65. *Williams* v. *Griffith*, 5 M. & W., 300. *Nash* v. *Hodgson*, 6, De G. M. & G., 474

(*c*) *Fraser* v. *Birch*, 3 Knapp., 380. *Bodenham* v. *Purchas*, 2 B. & Ald., 39. *Royal Bank of Scotland* v. *Christie*, 8 C. & F., 214. *Wickham* v. *Wickham*, 2 K. & J., 478

(*d*) *Wright* v. *Laing*, 3 B. & C., 165. *Ex parte Randleson*, 2 Dea. & Ch., 534. *Ribbans* v. *Crickett*, 1 B. &. P., 264

(*e*) *Mills* v. *Fowkes*, 5 Bing., N. C., 455. *Philpott* v. *Jones*, 2 A. & E., 41. *Cruikshanks* v. *Rose*, 1 Moo. & R. 100. *Arnold* v. *Mayor of Poole*, 4 M. & G., 860. *Lamprell* v. *Billericay Union*, 3 Exch., 283.

(*f*) *Goddard* v. *Hodges*, 1 C. & M., 33. *Burn* v. *Boulton*, 2 C. B., 476. *Goddard* v. *Cox*, 2 Str., 1194. *James* v. *Child*, 2 Cr. & Jer., 678

3. If neither the debtor nor the creditor appropriates the payment, and none can be presumed from circumstances, the Law will appropriate it to the discharge of the earlier debts

Clayton's case, 1 Mer., 608. *Bodenham* v. *Purchas*, 2 B. & Ald., 39. *Field* v. *Carr*, 5 Bing., 13. *Pemberton* v. *Oakes*, 4 Russ., 154. *Simson* v. *Ingham*, 2 B. & C., 65. *Brooke* v. *Enderby*, 2 B. & B., 70. *Sterndale* v. *Hankinson*, 1 Sim., 393. *Smith* v. *Wigley*, 3 Mo.

& Sc., 174. *Beale* v. *Caddick*, 2 H. & N., 326. *Hollond* v. *Teed*, 7 Hare, 50. *Siebel* v. *Springfield*, 12 W. R. Q. B., 73. *Re Medewe's trust*, 26 Beav., 588. *Merriman* v. *Ward*, 1 J. & H., 371. *Scott* v. *Beale*, 6 Jur., N. S., 559

4. An executor cannot alter a previous appropriation of payments so as to revive a liability on the estate which has already been extinguished

Merriman v. *Ward*, 1 J. & H., 371

5. If a customer pays in money to his bankers, specifically appropriated to certain purposes, the banker must appropriate it to those purposes only, and to no other

Chartered Bank of India, Australia, and China v. *Evan*, 21, L. T., N. S.,407. *Hill* v. *Smith*, 12 M. & W., 618

Bankers as **Agents** *or* **Correspondents** *of other Bankers*

10. 1. Bankers not only have their own customers, but they act as agents and correspondents of other bankers. They are, therefore, the agents of an agent

A customer frequently requires his banker to perform some duty for him which can only be done by his employing another banker at a distance; and even, sometimes, that agent employing another agent. In these successive agencies losses may happen quite innocently in the course of trade. In all such cases the banker originally employed is liable to his customer, because it was he who chose the agent who made the loss: or who chose the agent who chose the agent who made the loss. Therefore, the first banker must bear the loss as regards his customer, and then have recourse against his own agent

Lord North's case, Dyer, 161. *Matthews* v. *Haydon*, 2 Esp., N. P. C., 509. *Mackersy* v. *Ramsays*, 9 Cl. & Fin., 818

2. If a customer pays in a sum of money to his own bankers, with directions to him to remit it to another banker, and the first banker fails before he has done so, the property in it remains with the customer

Farley v. *Turner*, 26 L. J. Chanc., 710

The **Bankruptcy** *of a* **Customer: Set-off** *and* **Mutual Credit**

11. 1. Directly a customer is bankrupt he is commercially dead,

and he has lost all power to deal with his property, which is gone to his creditors

Consequently, a banker may *receive* money on a bankrupt customer's account, because he does so as trustee for the creditors; but he must not pay away any money to his customer's order after notice of his bankruptcy, and if he does so, he will have to refund it to the creditors, and he will not be allowed to prove for it under the fiat

Vernon v. *Hankey*, 2 T. R., 113

2. Where a bank, by special agreement with a customer, retained a sum of money as security for bills discounted, and the customer afterwards becomes bankrupt, it was held entitled to retain this sum against the assignees

The Chartered Bank of India, Australia, and China v. *Evans*, 21 L. T., N. S., 407

3. On the bankruptcy of a customer, each bill of his under discount is to be treated as a separate debt, and the bank cannot recover the full amount of the bill from the other parties, and receive the dividend upon it from the bankrupt's estate as well

Ex parte Hornby, De G., 69. *Ex parte Holmes*, 4 Deac., 82. *Ex parte Brook*, 2 Rose, 334

4. A banker, knowing that his customer had committed an act of bankruptcy, took from a surety, who did not know of this act of bankruptcy, a guaranty to secure all debts then, or to become, due from the customer to a given amount; which the surety paid without specifying which portion of the debt it should be applied to. Held that it was to be applied to the portion proveable under the fiat, and not that which was not proveable

Ex parte Sharp, 3 M. D. & De G., 490

5. A creditor generally may apply any security he holds to discharge whichever debt of the bankrupt debtor he pleases

Ex parte Haward: ex parte Arkley, Cooke's Bank. Laws, 147, 148. *Ex parte Hunter*, 6 Ves., 94. *Ex parte Johnson*, 3 De G. M. & G., 218

6. The holder of a bill of exchange has no Lien on any securities given by the drawer to the acceptor to protect his acceptance, so long as the parties are solvent: but if they fail, the holder has then a Lien on these securities to discharge the bill

7. But this doctrine does not apply when the drawee has not accepted the bills (*a*); nor in any case where the creditor has not

double rights against both firms (*b*); nor when either the drawer or acceptor is a Joint Stock Company, which has been ordered to be wound up, unless it can be shewn that the Company is insolvent (*c*)

(*a*) *Ex parte Waring*, 19 Ves., 345
(*b*) *Vaughan* v. *Halliday*, L. R., 9 Ch. Ap., 561
(*c*) *Hickie & Co.'s case*, L. R., 4 Eq., 226

8. *Set-off and Mutual Credit.* By the common law of England if two persons were mutually indebted, and one brought an action against the other for payment of his debt, the other could not plead that the first was also indebted to him; he was obliged to pay his debt first; and then, if he chose, he might bring an action to recover payment of his own debt

The Courts of Equity, however, adopting the Law of the Pandects of Justinian, recognised the principle that when two parties were mutually indebted, the debt of one should be *set-off*, or subtracted from the other, and the balance only should be payable. The want of this practice in law was found, as commerce increased, to be productive of great injustice in the case of bankrupts. Persons who owed debts to bankrupts were obliged to pay their debts in full, and then they received only a dividend on what the bankrupt owed them

The principle of *set-off* was allowed in the case of bankrupts, by Statute 4 Anne, c. 17, and afterwards in the Insolvent Debtors' Act

At last two general Statutes were passed, 2 Geo. II., c. 22, s. 13, and 8 Geo. II., c. 24, s. 1, called the Statutes of Set-off, which gave a general right of set-off, or *Compensation*, in the case of mutual debts: that is, in the case of ascertained money demands

But, under these Statutes, the respective claims must be existing legal debts: hence, a debt could not be set-off against damages sought to be recovered in an action: as, if a banker had damaged his customer's credit by his conduct, a debt owed to him by his customer could not be set-off against it. Nor can a debt barred by the Statute of Limitations be set-off against an existing one. Nor by these Statutes could a debt, only to arise at a future time, as on a bill or note not yet due, be set-off against an existing debt

The debts, therefore, must be due and payable at the time of the action, and also at the trial

Braithwaite v. *Coleman*, 4 N. & M., 654. *Hutchinson* v. *Reid*, 3 Camp., 329. *Eyton* v. *Littledale*, 7 D. & L., 55

9. The debts, also, must be strictly mutual: hence, if a firm sue for a partnership debt, a debt due from some members of the firm could not be a set-off. If a firm be sued, they could not set-off debts due to some of them. One partner, however, may *settle* a debt due to the partnership by setting-off against it a debt due from himself

The Statutes only permit set-off in the case of mutually existing legal debts. But the Bankruptcy Act goes further; it allows the set-off of mutual *credit*, as well as of mutual *debts;* and mutual *credit* is more extensive than mutual *debt*

There is mutual *credit*, though one of the claims constituting it is not yet due, as in the case of a bond, bill, or note, payable at a future time

Thus, if a banker is indorsee of a bill of a bankrupt acceptor or indorser, and the acceptor or indorser holds an equivalent amount of the banker's notes payable on demand, there is a mutual credit, and the banker may set-off one against the other

A Bill, accepted for the bankrupt's accommodation, is within the mutual credit clause, and may, under the Bankrupt Acts, be set-off against a demand by the assignees for money had and received to *their* use after the bankruptcy

If a banker, however, commits a breach of trust, as, if he receives bills or notes, with orders to apply their proceeds to a particular purpose, and, instead of doing so, converts them to his own use, he could not plead set-off

10. Mutual credit aud a Lien do not destroy each other

Clark v. *Fell*, 4 B. & Ad., 404. *Ex parte Barnett*, L. R., 9 Chanc. *Ap.* 293

11. Under the Bankrupt Act a set-off is available in all actions, whether for debt or damages

Under the term *mutual credit*—the credit need not necessarily be given in money. Thus, if goods be deposited with the authority to convert them into money, that may be pleaded as set-off. Thus the mutual credit must be such as was intended to terminate in a

debt. This is manifestly the same principle as applies to bills and notes not yet due

Mutual credit, however, must actually exist at the time between the bankrupt; therefore, when the defendant promised to indorse a bill to the bankrupt, in consideration of his acceptance, it was held not to be mutual credit

12. A creditor borrows money from his debtor under an express promise to repay. He may, nevertheless, plead set-off of his original debt

Lechmere v. *Hawkins*, 2 Esp., B. 6. *Taylor* v. *Okey*, 13 Ves., 180. See also *Cavendish* v. *Greaves*, 24 Beav., 163

13. Right of set-off, under the Statute, only exists where the debts are enforceable by action

Rawley v. *Rawley*, 1 Q. B. D., 460

On Banking Investments

12. Though a banker is bound, theoretically, to repay every one of his customers instantly on demand, yet, as no man whatever would spend all his money if it were in his own possession, but would keep a store of it, and spend it gradually, so, when he keeps it at his banker's, he will not be likely to require it all at once, but will keep a store of it there, just as he would have done if he had kept it at home; and the banker is able to trade with it in a variety of ways, if he takes care to keep by him sufficient to meet any demand his customers are likely to make on him. The different methods in which a banker trades with the money left with him by his customers, depend very much on the class of his customers, and their occupations, and the general business of the locality he lives in. He must adapt his business in such a way as may be most suitable for the class of customers he has to deal with; so that he may never fail, for an instant, to meet any demand. If his customers are chiefly country gentlemen, whose rents are remitted regularly, and who draw them only for family expenditure, he may calculate pretty accurately on the demand likely to be made on him, and he may lend out his funds on more distant securities than are proper in other cases. Such are chiefly country bankers in agricultural districts, and those at the West End of London

But when a banker does business in a trading community, who are in constant want of their money, and whose demands are much more frequent and unexpected, he must adopt a very different line of business. He must then have his funds within reach at a very short notice, and he ought to have them invested in such property as he can re-sell on a very short notice, to meet any unexpected pressure upon him. The business of such a banker will chiefly consist in discounting bills of exchange, and is of a distinct nature from that of lending money on mortgage

We must now consider the various methods in which bankers trade. They are—1st, by discounting bills of exchange; 2ndly, by advancing to their customers, on their own promissory notes, with or without collateral security; 3rdly, by means of cash credits, or, as they are sometimes called, overdrawn accounts; 4thly, by lending money on mortgage; 5thly, by purchasing public securities, such as stock or Exchequer bills

On Discounting Bills of Exchange

13. In Chap. IV., sect. 3, we have fully explained the nature and origin of bills of exchange—in the present Chapter we have only to make some practical observations on the subject

If an abundant supply of perfectly good bills of exchange were always to be had, they are, no doubt, the most eligible of banking investments, for their date is fixed, and the banker always knows the precise day when his money will come back to him. He charges the profit at the time of the advance, and he gains it, whether the customer draws out the money or not; and, in a large bank, it must often happen that drawers, acceptors, and payees are all customers of the same bank, so that when the drawer has his account credited with the proceeds of the bill, and draws out the money, so far as he is concerned, in many cases it must often happen that the cheque finds its way to some one who is a customer to the same bank, and, therefore, the bank has reaped a profit on creating a credit, which is simply transferred from one account to another. And the same results take place much more frequently by means of the system of clearing, explained in the next Section, by which all the banks that join in it, are, in fact, but one great banking institution. If it should

happen that a customer of one of the great banks draws a cheque in favour of the customer of another, the chances are that some customer of the other bank has done precisely the same in favour of a customer of the first bank, and these claims are settled by means of the Clearing House, by being set off one against the other, without any demand whatever for coin. The more perfect, of course, the clearing system, the less coin will be required. Consequently, the greater part of banking profits are now made simply by creating credits, and these credits are paid, not in cash, but in exchanging them for other credits

When a banker *discounts* a bill for a customer he buys it, or purchases it, out and out from him, and acquires all his customer's rights in it, that is, of bringing an action against all the parties to it, and also of re-selling it again if he pleases, or *re-discounting* it, and this is one of the great advantages of discounting bills, that if there be an unusual pressure for cash on the banker, he can re-sell the bill he has bought

The bills a banker, then, has bought, are his stock-in-trade. He buys them from his own customer at a certain price, and sells them again to the acceptor, just as a hosier may buy stockings from the manufacturer, and sell them to a customer

When a banker discounts a bill he writes down the full amount of the bill to the credit of his customer, and at the same time he debits him with the discount on it

The system of discounting bills is intended to be the sale of *bonâ fide* debts for work done, or for property actually transferred from one party to another, and there is nothing that requires more sleepless vigilance on the part of a banker than to take care that the debts he buys are genuine and not fictitious ones. When bills are offered for sale, he ought to know whose debt it is that he is buying, and he ought to be able to form some conjecture as to the course of dealing between the parties, which could give rise to the bill. Bills should not only be among traders, but only according to a particular course of trade. We will speak of real debts in the first place; and these may arise in a number of different ways. First, between traders in the same business, and, secondly, between traders in different species of business, but yet for work done. If we take the case of manufactured or imported goods, there are usually three stages they pass through—1st, from

the manufacturer or importer to the wholesale dealer; 2ndly, from the wholesale dealer to the retail dealer; and, 3rdly, from the retail dealer to the consumer. Each transfer of property may give rise to a bill; but, of these, the first two are by far the most eligible, and are most peculiarly suitable for a banker to buy; the third should only be purchased with very great caution, and but rarely

There are other cases of good trade bills, when one business requires the supply of different productions, such as a builder requires a supply of wood, lead, slates, bricks, and other materials

Hence, a bill of a wood merchant, or a lead merchant, on a builder, would be a very natural proceeding, and apparently a proper trade bill. Again, bills may legitimately arise between traders of wholly different descriptions, but yet for work done. Thus, if a builder fits up premises for a shopkeeper or merchant, a bill between the parties for the work done is a very legitimate one for a banker to discount. All these bills, therefore, follow the natural course of trade, and carry the appearance, on the face of them, of being genuine

But if a banker sees bills drawn against the natural stream of trade, it should instantly rouse his suspicion. Thus, a bill drawn by a wholesale dealer upon a manufacturer, or by a retail dealer upon a wholesale dealer, would be contrary to the natural course of trade, and should arouse suspicion. A bill drawn by a lead merchant upon a builder would be proper on the face of it, if there were nothing to excite suspicion; but a bill of a builder upon a lead merchant would be *suspicious*, unless it were satisfactorily explained. Moreover, bills of one person upon another, doing the same business, are suspicious upon the face of them. Thus, a bill of one manufacturer upon another, in the same business, or between one wholesale dealer and another, are evidently suspicious, because there is no usual course of dealing between them. Besides, such bills are chiefly generated in speculative times, when commodities change hands repeatedly, on speculation that the prices will rise. Bankers should be particularly on their guard against buying bills drawn against articles which are at an extravagant price, in times of speculation

As it by no means commonly happens that the drawers and acceptors of bills are customers of the same bank, the banker is

primâ facie influenced by the respectability of his own customer, who is the drawer or indorser of the bill. He ought, however, to require specific information regarding the persons upon whom his customers are in the habit of drawing, and satisfy himself that they are likely to be genuine bills. And this vigilance should never be relaxed in any case whatever. We hold it to be utterly contrary to all sound banking to take bills merely on the supposed respectability of the customer. But we believe it to be far too common a practice to look merely to the customer's account. Customers begin by getting the character of being respectable—they bring, perhaps, good bills at first—and keep good balances; and their bills are punctually met. This regularity and punctuality are very apt to throw a banker off his guard. He thinks his customer is a most respectable man, doing a good business; all the bills are taken to be trade bills. By-and-by the customer applies for an increased discount limit, on account of his flourishing business. The banker is only too happy to accommodate so promising a customer. His discounts swell, and his balances diminish, but his bills are still well met. However, the time comes, perhaps, when the banker thinks it prudent to contract his business generally, and this may be one of the accounts he may think it expedient to reduce; and then he makes the pleasant discovery that there are no such persons at all as the acceptors, and that the funds for meeting all these bills have been got from himself!

Such cases as these are not unlikely to happen when London houses supply small country tradesmen, and draw bills on them. When a man has established a good character, it is impossible to require information about every bill before it is discounted; but we do not hesitate to say, that it is of the first importance that a banker should be constantly probing his customers' accounts, and get information of the persons they draw upon. It was wittily said by some one (Lord Halifax, we believe) "that man in this world is saved chiefly by *want* of faith." This is eminently true of banking. A banker should have faith in no man. The amount of villainy and rascality which is practised by means of accommodation and fictitious and forged bills, would exceed belief, if such disclosures were made public. However, it is contrary to the policy of bankers to allow it to be known how

they are robbed and cheated. Their interest covers a multitude of sins. If criminals were prosecuted according to their merits, the calendar would swell up to a frightful extent. There is, probably, no class of society who see felonies committed so frequently as bankers, and are necessitated to let them go unrepressed and unpunished. The number of unconvicted felons that go about with impunity in the commercial world is something horrible; and there is reason to fear that such things are encouraged by the too easy faith reposed in their customers by bankers. If bankers were more vigilant in scrutinising their customers' accounts, many would have been cut short in a career of crime—of accumulated robberies, which generally terminate in disaster to the bank

As it is contrary to all sound principles of banking to discount bills solely on the customer's respectability, as appearing from his account, so any customer should be regarded with suspicion who is not ready and willing to communicate information to his banker about his affairs. If he will not candidly communicate the state of his affairs to his banker, how can he expect him to give him assistance in the day of trouble? Some customers, however, are mightily indignant if their banker will not discount their bills on the strength of their names without regard to the acceptor. But as such a practice is contrary to sound banking, so it will invariably be found that these are not desirable customers to have, and it would be well for a banker quietly to shake off his connection with them, as in the long run, they will probably bring him more loss than profit

Advances on **Loan** *with Security*

14. So much for discounting bills of exchange, which consists in buying debts, and not *lending* money. A banker, however, may not always be able to find a sufficient quantity of debts to buy, to absorb all his disposable credit, or he may not choose to employ it all in that manner; and some of his customers may want a temporary loan on security, who have no bills to sell. The banker takes his customer's promissory note for the sum payable at the date agreed upon, and also a deposit of the convertible security as collateral security. He does not advance

on the goods or security itself—that is the business of a pawnbroker—but on the personal obligation of his customer, and the securities are only to be resorted to in case of the failure of the customer to pay his debt. These convertible securities are chiefly public stock, Bank stock, India bonds, shares in all sorts of companies, railway, bank, insurance, &c., dock warrants, bills of lading. Whenever he takes any of these as collateral security, he ought to have a power of sale from his customer, in case he fails to discharge his obligation. These loans, though often they may be made to respectable customers, are not desirable advances for a banker to make, and he should be chary in encouraging them too much, for they frequently are demanded from the borrower having locked up too much of his funds in an unavailable form ; consequently, there is much danger of the obligations not being paid at maturity, and then comes requests for renewals, and the banker is either driven to the unpleasant necessity of realising this security, or else having his temporary advance converted into a dead loan

Persons who seek for such advances habitually, are most probably speculating in joint stock companies' shares. They buy up shares on speculation, which they hope will advance in price ; they then wish to pledge the shares they have already bought to purchase more : then perhaps, a turn in the market comes, and the value of the whole goes down rapidly ; they are unable to pay their note, and the banker may have to realise the shares at a loss. During the railway mania of 1845, a number of banks, called exchange banks, were founded expressly on this principle of making advances on joint stock companies' shares, especially railway shares ; but they have all been ruined, and some of them, we believe, suffered frightful losses from the great fall in the value of railway stock

The objection to such transactions in a banking point of view is that the promissory notes of these customers and their securities are not available to the banker in case he is pressed for money. Moreover, they are barren isolated transactions, which lead to nothing ; whereas a discount account promotes commerce, and becomes more profitable as the business of the customer increases

There is also a very important point to be considered in the shares of many companies which are offered as collateral security,

that, by the deeds of the companies, no property in the shares passes, except by the registration of the name of the holder in their books. Now, while the customer is in good circumstances, there may be no danger; but if he becomes bankrupt, the banker is not entitled to retain the shares against the other creditors. If the bankrupt is the registered owner of the shares, his creditors are entitled to them, consequently, if the banker means to complete his security, he must have himself registered as the owner of the shares, and thereby become a partner in a multitude of joint stock companies, of whose condition he can know nothing. Then, perhaps, calls are made, and the banker finds that, instead of buying a *security*, he has bought a *liability*, and he must pay up the calls, or forfeit the shares

All such advances, therefore, should be made very sparingly, and only with such surplus cash as the banker may not be able to employ in buying good bills; and they should only be made to such persons as he believes to be perfectly safe without the deposit of the security. No banker would make such an advance if he really believed that he should be obliged to realise the security to repay himself, as such proceedings will always make a soreness between himself and his customer, who will be averse to seeing his property sold at a sacrifice, as he may call it

Advances on dock warrants, and other similar securities, are also liable to many similar objections, and should be very sparingly done, as they subject a banker to much trouble beyond the line of his proper business, and are indications of weakness in a customer. Many customers will expect to have loans upon leasehold or freehold property left as security, but these are the most objectionable of all as collateral securities. Many, if not the greater portion of leases, prohibit the tenant letting the property, without the written permission of the landlord, consequently, such leasehold property is no security at all to a banker. Freehold property is not exposed to this disadvantage, but the process of realisation is so uncertain, and long, and tedious, that it is perfectly unavailable to the banker in case of necessity. In fact, we believe the best rule in all cases of loans with collateral security (except in such instances as public stock) it to avoid, as much as possible, making them to any one who is not perfectly good without them

On Advances by way of Cash Credits *and* Overdrawn Accounts

15. We have, in Chap. VI. § 17, given a full account of the system of Cash Credits in Scotland, and of the prodigious advances in wealth which the country owes to it. But that system originated and owes its success entirely to the issue of £1 notes; and it would be almost destroyed by their suppression. When, therefore, it is seen in Scotland that it is entirely due to the £1 note system that the Banks are able to push their branches into the wildest and remotest parts of the country, they naturally resent and resist interference with it by persons who have no personal experience of its advantages

To a certain extent the system of *Overdrawn Accounts* serves the same purpose in the country districts of England: but only to a very limited extent. It is quite impossible to extend the same banking accommodation to the poorer and humbler class of customers by means of overdrawn accounts, where bankers can only deal with the money placed with them by their customers, as when they are able to coin their own money by the issue of £1 notes

The objections to Cash Credits and Overdrawn Accounts, in a banking point of view, are that in times of pressure it is all but impossible to call up the advances, and the securities are not realisable: hence it is only where banks are of great solidity, and not liable to runs, that it is safe to carry out such a system on a large scale

The same objections apply to advances on mortgages, which are intended to last for years. Such transactions are, therefore, chiefly confined to country bankers and those at the West End of London, whose connections lie more with the landed than the mercantile interest, and who are not liable to such sudden demands for cash

On Investments in Public Securities

16. Besides these operations, all of which are founded upon personal liability—all of which contain personal obligations to pay fixed sums of money, and are, therefore, dealings in "Currency"—

bankers usually invest part of their funds in public securities, which are supposed to be more readily convertible into cash than others. Public securities are of two descriptions—the one "currency, or securities for money," such as Exchequer Bills—the other "property, or convertible securities" such as stock, or the funds; the former being an engagement on the part of the Exchequer to pay a certain sum of money, like any other bill; and the latter being no engagement to repay any fixed sum at all, but only a fixed rent, or sum, for its use. The public funds are a great estate, of which the nation is tenant, and pays a rent for it, solely guaranteed by the public faith

Each description of public securities has its advantages and disadvantages. The interest on public stock will be found in the long run, to be higher than those on any other descriptions of public securities; but there is this serious consideration, that the value of these stocks is so extremely fluctuating, that when any public crisis comes, and bankers wish to *sell* their stock, they may sustain a very great loss. In the week of the great crisis of 1847, when many banks had to sell stock to provide for contingencies, the losses were immense when they bought in again to replace it. Another disadvantage regarding stock is, that all the transactions of bankers must become known, as they have to transfer it. Exchequer Bills have this advantage, that a banker can deal in them without its being known to any one but the broker. Exchequer bills, being, like any other promissory note, an engagement of the Government to pay a definite sum of money, it is not probable that the banker can ever lose so much on them as on stock. In order to prevent Exchequer bills falling to a discount, they always bear interest, and, in consequence of this, are usually at a premium; and when, by the change in the market rate of interest, they fall to a discount, the interest upon them is usually raised. From these circumstances the profit of investment in Exchequer bills is less than from stock

17. Bankers collect money from those who have it to spare, and advance it, or its equivalent, to those who require it. They may sometimes, themselves, be in a similar predicament. Sometimes they may have more by them than they have employment for; sometimes, from unusual demands, they may be in want of

temporary advances. There is a class of persons who undertake this great equalising process—namely, the bill brokers. They go the round of the bankers every morning, and borrow from those who have to lend, and lend to those who want to borrow

18. At the present day, the principle of association has been developed to a much greater degree than ever it was before. Companies are being formed for all manner of purposes. When these customers apply to open an account with a banker, it will generally be found that they want accommodation. But a banker should very rarely indeed accommodate the *company*, of whose affairs he can know very little. He should never grant accommodation to such a company, unless he is well assured of the responsibility and respectability of the directors themselves ; and if he allows the company to have accommodation, it should be only on the personal liability of the directors. He should require from them a joint and several note, payable on demand, reserving his right against the company only as a collateral security. This course will be found to be attended with many advantages, because, if anything goes wrong with the company, he has an immediate remedy without any trouble. Whereas, if the company goes into the Winding-up Court, it will be a considerable time before his claim can be settled ; and then there may be some technical objection. The contributors may say the directors had no right to draw bills by the constitution of the company, or they may have exceeded their power ; and then he may have to contest his claim through a number of different courts, bringing him nothing but vexation and anxiety

Table of **Charges** *of the Scotch Banks*

19. In June, 1882, the Scotch banks unanimously agreed to the following scale of charges—

Table of Interest, Discount, and Charges applicable to Scotland

I.—INTEREST ON MONEY LODGED :

The Rates to be fixed, from time to time, at Meetings of the Banks to be held in Edinburgh

Note.—No Interest to be paid on other than regular operative Accounts, unless the Money has been lodged a month. Savings' Banks may, according to the discretion of each Bank, be allowed upon money lodged on Deposit Receipt $\frac{1}{2}$ per cent. more than the ordinary Deposit Receipt rate for the time, when that rate is not above $2\frac{1}{2}$ per cent.

II.—Interest on Advances on Current Accounts :

The Rates to be fixed, from time to time, at Meetings of the Banks to be held in Edinburgh—but the charge on *Overdrafts* on Cash Credit, or other Current Accounts, may be limited to the Cash Credit Rate *in special cases in which this is sanctioned by the Head Office*

*** In June, 1885, the Scotch Banks unanimously agreed to abolish interest on the daily balances of current accounts : and to allow it only on the minimum monthly balance

III.—Discount and Commission on Bills :

The Rates of Discount to be fixed, from time to time, at Meetings of the Banks to be held in Edinburgh

The following Rates of Commission to be charged on Bills other than Local, in addition to the Discount—

1. On Bills payable in Scotland, 1*s.* 3*d.* per cent. Maximum charge, 7*s.* 6*d.*

2. On Bills payable in London, no commission

3. On Bills payable elsewhere in England, or in Ireland, 2*s.* 6*d.* per cent.

Exempt from Charge.—1. Bank of England Post Bills. 2. Bills on London not having more than four days to run, inclusive of days of grace

4. On Bills payable on the Continent of Europe at "*Exchange as per Indorsement,*" Discounted Bills, 10*s.* per cent. in lieu of Discount. Bills lodged—see below

IV.—Charges for negotiating Documents Payable on Demand :

1. On Cheques and Drafts on *Bankers* in Scotland, whether

cashed or lodged for Collection, 1*s.* 3*d.* per cent. Min. charge, 6*d.* Max. charge, 15*s.*

2. On Cheques and Drafts on *Bankers*, payable in London, no Commission

2. On Cheques upon English Banks cashed, payable elsewhere than in London (whether bearing a reference to a London Banker or not), sent to London for negotiation through the Country Clearing House, 1*s.* 3*d.* per cent. Min. charge, 6*d.*

Note.—If preferred, credit may be given for amount of Cheque, *free of charge*, on the fourth business day after the Cheque has been handed to the Bank

4. On Cheques upon English Banks, payable elsewhere than in London, if sent direct to the town on which drawn (*by desire of the customer*), 2*s.* 6*d.* per cent. Min. charge, 6*d.*

5. On Documents on Demand on *Bankers*, payable in Ireland, whether cashed or lodged for Collection, 2*s.* 6*d.* per cent. Min. charge, 6*d.*

6. On Cash Orders, **Cashed,** payable in London, 5*s.* per cent. Min. charge, 1*s.* Max. charge, 10*s.* If dishonoured, 5*s.* per cent. Min. charge, 1*s.*, with Interest due

7. On Cash Orders, **Cashed,** payable in Scotland, 5*s.* per cent. Min. charge, 1*s.* Max. charge, 40*s.* If dishonoured, 2*s.* 6*d.* per cent. Min. charge, 1s., with Interest due

8. On Cash Orders, **Cashed,** payable elsewhere in the United Kingdom, 5*s.* per cent. Min. charge, 1*s.* If dishonoured, 5*s.* per cent. Min. charge, 1*s.* Max. charge, 10*s.*

9. On Cash Orders, **Lodged for Collection,** whether paid or not, payable in London, 2*s.* 6*d.* per cent. Min. charge, 1*s.* Max. charge, 10*s.* Payable in Scotland, 2*s.* 6*d.* per cent. Min. charge, 1*s.* Max. charge, 20*s.* Payable elsewhere in the United Kingdom, 2*s.* 6*d.* per cent. Min. charge, 1*s.* Each document to be charged for separately. The term "Cash Order" to include Receipts, Receipted Accounts, and other Documents of a similar description. "Orders" unpaid to be returned on the day after receipt at latest, and not to be held over on any pretext whatever. "Orders" sent by post to a Bank by a private party to be charged the rate applicable to "Orders" lodged for Collection, together with the remitting Commission, should the proceeds be accounted for by Draft or Transfer

10. Coupons and Bonds payable at any other than Bank Offices. These are to be treated as *Cheques*, not as Cash Orders

Exempt from Charge.—Cheques drawn by the Bank's customers on any other Office of the Bank, when presented by the customers *personally*, by *members of their families*, or by *persons exclusively in their employment*; also, wherever payable, Cheques on Church Accounts, issued in favour of Clergymen or Teachers, Cheques in favour of religious or charitable Institutions, and Cheques or Receipts on forms issued by any Government Department

V.—Charges for granting Drafts and making Transfers by Advice:

1. On the Bank's Agents or Correspondents in London, Drafts or Transfers payable *on demand*:—For sums up to £300, 2*s.* per cent.; minimum charge, 6*d.* For sums from £300 to £600, uniform charge, 6*s.* For sums above £600, 1*s.* per cent. Each Draft or Transfer to be charged for separately, and the Stamps to be charged in addition. Drafts payable at "*seven days after date*" to be charged the Stamp only. When at a shorter currency, or at a currency to cover the expense of the Stamp, the difference to be reckoned at the Deposit Receipt rate. Transfers by advice to be made free, if payment be postponed ten days. Drafts for remittance of *Government Revenue* to be granted at eleven days' date, free of Stamp duty

2. On the Bank's Correspondents elsewhere in England, or in Ireland, 2*s.* 6*d.* per cent.; minimum charge, 6*d.* The Stamps to be charged in addition

3. On the Bank's Head Office, Branches, or Correspondents in Scotland, 1*s.* per cent. Max. charge, 10*s.*; min. charge, 6*d.*; but for sums of £5 and under, 3*d.* The Stamps to be charged in addition

Exempt from Charge.—I. Drafts on the Bank's Agents or Correspondents in Scotland, purchased by Collectors of Revenue, as such, and all Remittances to Religious and Charitable Institutions. On these the Stamp alone to be charged. II. Transfers of sums paid in by customers *personally*, by *members of their families*, or by *persons exclusively in their employment*, for their

credit at another Office of the Bank in Scotland ; the Stamp to be charged when a Draft is given

Evasion of Charges for Bank Drafts.—In order to prevent parties from evading the charge for Bank Drafts, by lodging the amount temporarily in name of their Correspondents, with a view to its being drawn out at another Office, free of charge, the usual Commission should be exacted on all Deposit Receipts cashed at other Offices within ten days of their date

VI.—Other Charges

1. On Retiring Bills in London, 2*s.* 6*d.* per cent., with Interest due. The following modified charges may be made, at the option of each Bank, in the case of Customers having large transactions, viz.:—For the first £50,000 in any one year, 2*s.* 6*d.* per cent. ; for the second £50,000 in any one year, 1*s.* 6*d.* per cent. ; for the excess beyond £100,000 in any one year, 1*s.* per cent.—Chargeable at the end of the year

2. On Drafts on Demand against Credits with English Provincial or Irish Correspondents, 3*s.* per cent., with Interest due. If against cash deposited without Interest, same Rate as for Drafts on London

3. On Drafts on Demand against Credits with London Correspondents. Same Commission as for Drafts on London

4. On Bills payable in England or Ireland, recalled before maturity, 2*s.* 6*d.* per cent. Bills recalled for non-acceptance only, discretionary

5. On Discounted Bills, or other Documents (except Cash Orders), payable in Scotland, returned dishonoured, 2*s.* 6*d.* per cent., with Interest due

6. On Discounted Bills, or other Documents (except Cash Orders), payable elsewhere, returned dishonoured, 5*s.* per cent., with Interest due

7. On Acceptances by the Bank, or their London Correspondents, of Foreign Bills, payable in London, if secured by a special Deposit of the amount, 5*s.* per cent., with Interest due ; if on other Security, if not exceeding 3 months in currency, 10*s.* per cent., with Interest due ; if exceeding 3 months in currency, 15*s.* per cent., with Interest due

8. On Bills or Documents on Bankers, payable in England or

Ireland, lodged for Collection, 2*s.* 6*d.* per cent., whether paid or dishonoured

9. On Bills or Documents on Bankers, payable in Scotland, lodged for Collection, if paid, same Commission as on similar Documents discounted ; if dishonoured, 1*s.* 3*d.* per cent.

10. On Bills or other Documents, payable abroad, lodged for Collection, 5*s.* per cent., in addition to charges incurred by Bank, whether paid or dishonoured

11. On Pay, Dividends, or Annuities drawn by London Correspondents, except for regular customers, 2*s.* 6*d.* per cent. Minimum, 1*s.*; maximum, 5*s.*

12. On Purchases of Government or other Stocks, in London, 3*s.* per cent., with Interest due

13. On Transfers of Government or other Stocks, without purchase, discretionary, according to trouble and amount

14. On Powers of Attorney taken out, and Wills or Deaths proved for Transfer of Stock, etc., discretionary, according to trouble, but not less than 2*s.* 6*d.* each

15. Calls and Dividends of Joint-Stock Companies, any Commission to be discretionary, except as regards Dividends paid in London, on which not less than 1*s.* per cent. shall be charged. The aggregate amount required for the payment of each Dividend to be placed on a separate account, bearing no Interest

16. Payment in London against Shipping Documents, whether or not accompanied by a Draft on Demand, 2*s.* 6*d.* per cent.

17. Delivery in London of Shipping Documents, or Stock Transfers, on receipt of value, charge, if any, discretionary

18. Delivery in Scotland of Documentary Bills, payable in London, or elsewhere in the United Kingdom, taken up under rebate, Commission to be at Rates for Drafts on London, or other place, as the case may be

Note.—Bills and other Documents, *not having more than five days to run*, to be cashed by the Banks with each other, without charge. The usual Discount to be charged for the additional days on Bills of longer currency

In all matters of Charges **Berwick-on-Tweed** to be treated as a *Scotch* town

Questions as to the true meaning of any part of the Scale shall be decided at Meetings of the Banks to be held in Edinburgh

On the **Clearing System**

20. We must now explain the mechanism of the Clearing System, which has been greatly misunderstood

It is usually supposed that the Clearing System is an example of the great principle of Compensation, by which Debts are paid and extinguished by being exchanged or set-off against each other: as was the custom of merchants at a large number of continental fairs: and in foreign treatises the Clearing House is usually termed *Maison de Liquidation, or Compensation*

This, however, is a great misconception: and an explanation of the mechanism of the Clearing House clearly illustrates the distinction between the two systems of Commercial and Banking Credit: Commercial Credit is only created to last for a certain definite time, and is extinguished with the documents which embody it: Banking Credit is not intended to be extinguished at any definite time: and it is not generally extinguished with the documents which embody it

In many parts of the Continent it was the custom for merchants to make their bills payable only at the great fairs in various cities. In the meantime they circulated throughout the country, and performed all the functions of money. At these fairs the merchants met together and exchanged their acceptances: thus the paper documents and the debts were extinguished simultaneously, by the principle of **Compensation,** or **Set-off.** But by this device an enormous amount of commerce was carried on, and debts were extinguished without the payment of one *sou* in coin

But the purpose and effect of the Clearing System are very different. When any number of the customers of the same bank have transactions among themselves, and give each other Cheques on their accounts, if the receivers of the Cheques do not draw out the money, but pay them into their own accounts, the Credits are simply *transferred* from one account to the other. The Cheque is extinguished: but the Credit is not extinguished; it is only transferred: and the same Credit may be transferred any conceivable number of times from one account to another in the same bank, to the end of time, without ever being extinguished at

all. In all such cases, therefore, the Cheque is a mere order o transfer: and when the Credit is transferred from one account t the other, the document has effected its purpose, and is cancelle —but the Credit exists exactly as it did before

So with a Bank Note. If a person holding a banker's note pays them into his account, the Notes are extinguished but th Credit is not extinguished: the amount is entered to the cus tomer's credit: he has exactly the same Right of action a before: and the banker's liability remains the same. If a cus tomer pays into his account the notes of another banker, th banker collects the notes and gives his customer credit for th amount. The Clearing System is a device by which all the bank which join in it are formed into one huge institution for th purpose of transferring Credits from one bank to another, just a Credits are transferred from one account to another in the sam bank

Every banker has every morning claims against most, if no all, of his neighbours: and of course they have claims against him. These claims are called *Bankers' charges*. Each banke having collected all the sums due to himself, re-adjusted th Credits to the different accounts. By this means it is evident that no Credits were cancelled or extinguished between the different banks: they were only re-adjusted among different customers' accounts: and this was done by the means of ex changing a vast amount of Bank Notes between the differen bankers. Thus an immense amount of Notes were required to b kept out of circulation for no other purpose than to be dancing about from bank to bank to settle their accounts against each other. It was stated in evidence before the House of Commons many years ago, that the London and Westminster Bank alon was obliged to keep £150,000 in Notes for this sole purpose. An if one bank alone, then comparatively in its infancy, was obliged to keep such a sum idle for this purpose, what would have bee the sum necessary at the present time to be retained by all th different banks? It is certain that it would have absorbed a least half of the authorised circulation of the Bank of England

To remedy this inconvenience an ingenious plan was devised it is said, by the Banks at Naples, in the sixteenth century. Th banks instituted a Central Chamber, to which each sent a clerk

These clerks then examined and stated their different claims against each other, and paid only the *difference* in Notes. By this means the different Credits were re-adjusted among the different customers' accounts just as easily as before: and an immense amount of Notes were set free for the purpose of circulation and commerce: and were, in fact, equivalent to so much increase of Capital to the banks and to the country

21. The Banks in Edinburgh were the first in this country to adopt this plan. For a considerable time they used to do all they could to injure each other. They used sometimes to collect a large amount of each other's notes and present them suddenly for payment, in the hope of ruining their rivals. At last they became sensible that this undignified conduct was mutually injurious: and they agreed that they should meet twice a week and adjust their respective claims: and that they should make no demand upon each other except at these times. This exchange is made alternately at the offices of the Bank of Scotland and the Royal Bank. The banks used formerly to settle their differences by ten days' drafts upon London. Subsequently to this, it was agreed that each bank should keep a fixed amount of Exchequer Bills, and the differences were paid by these Exchequer Bills. This plan, however, was discontinued in 1864, and the following rules, which are now in force, were settled in 1876

Rules to be observed at the Edinburgh Clearing House

I. The Clearing House shall be opened every business day, except Saturday, at one o'clock, and closed at fifteen minutes past one, after which no documents shall be received. On Saturdays the Clearing House shall be opened at eleven o'clock, and closed at fifteen minutes past eleven

II. The Clearing House shall not be opened on Bank Holidays. On half-holidays it shall be opened at ten o'clock, and closed at fifteen minutes past ten

III. Each Bank shall be represented at the Clearing House by a competent clerk, who shall deliver and receive the documents referable to his Bank. An assistant clerk shall also attend when required, that there may be no delay in closing the clearing

IV. Each clerk shall be furnished with a set of books for the various Banks, in which the documents delivered by him shall be entered and summed up before he goes to the Clearing House, and he shall hand to each of the other Banks a duplicate list along with the documents delivered. He shall also be furnished with a book in which he shall strike the balances against him or in his favour with the other Banks, and he shall not leave the Clearing House until the general balance is completed

V. Besides orders payable on demand at the Banks in Edinburgh (including district branches), and bills domiciled with the head offices of the Banks in Edinburgh, orders or bills payable elsewhere in Scotland, and requiring to be cashed by the Banks with each other, may be passed through the Clearing House. Although the general rule is to pass all clearing documents through the Clearing House, it shall be in the option of each Bank to collect any such documents in cash

VI. Each document shall be sufficiently discharged before being sent in, and shall bear a Clearing House stamp containing the name of the Bank to which it belongs, and the date of clearing, in addition to which, if it has been cashed at a district branch, it shall bear the stamp of that branch

VII. Documents passed through the Clearing House, payable at the district branches of banks in Edinburgh, shall be forwarded in time for presentation the next morning

VIII. Documents drawn on the head office of any Bank, which are not duly honoured, shall be returned on same day, by messenger to the head office of the Bank to which they were cashed by 3 o'clock on ordinary days, and 12.30 on Saturdays, and shall be repaid in cash. Documents payable at the district branches, which are not duly honoured, shall be returned through the Clearing House on the day after that on which they were cleared; or it shall be optional to return any such document direct by messenger to the office at which it was cashed, provided that this be done before the hour of clearing, on the day after that on which the document in question was passed through the Clearing House

IX. All documents returned unpaid shall have a written answer appended, stating the cause of dishonour

X. The Banks agree to dispense with the indorsement of country exchange vouchers, passed through the clearing

XI. The Bank of Scotland and the Royal Bank of Scotland agree to undertake the settlement of the clearings each alternate month. On Monday, Tuesday, and Thursday, the balances shall be included in the general settlement of the exchange and clearing, the odd shillings and pence being accounted for in cash. On other days, the settling Bank will receive from those Banks which are *Debtors* on the settlement, and give to those which are *Creditors*, exchange vouchers for the respective balances, including the odd shillings and pence, within one hour after the closing of the Clearing House, and these vouchers shall be brought into the next day's clearing. The rules for conducting the general settlement of the exchange and clearing are laid down separately.—Neither the Bank of Scotland nor the Royal Bank of Scotland shall incur any responsibility whatever in respect of these transactions

XII. All expenses connected with the Clearing House shall be borne by the Banks in equal proportions and shall be paid by them half-yearly

Rules to be observed at the Exchanges of Notes and General Settlements of Balances between the Banks in Edinburgh

I. There shall be Exchanges of Notes, and General Settlements of these Exchanges, and of the Clearing House, as follows :—

Exchange of Notes.	General Settlement of Exchanges and Clearing.		
	On	To include	
		Notes.	Clearings.
Daily, except Monday, at 10 A.M.	Tuesday, at 2 P.M.	Small Notes of Saturday, the Notes of Monday, and the Glasgow Settlement of Tuesday.	Thursday.
Also on Saturday, at 1.30 P.M. for large Notes only	Thursday, at 2 P.M.	The Notes of Tuesday and Wednesday; also, the Country Exchanges of Wednesday, and the Glasgow & Leith Settlements of Thursday.	Wednesday and Thursday.
	Monday, at 2 P.M.	The notes of Thursday and Friday, and the large notes of Saturday, also the Glasgow and Country Exchanges of Saturday.	Friday, Saturday, & Monday.

The general settlements shall be made by the clearing clerks

II. When Tuesday is a holiday, the general settlement shall be made on Wednesday ; when Thursday is a holiday, the general settlement shall be made on Friday ; when Saturday is a holiday,

there shall be an exchange on Friday afternoon ; and when Monday is a holiday, the general settlement shall be made on Tuesday, but there shall be no exchange of notes that day.—When the Term day falls on a Saturday, the Exchange shall meet in the afternoon, at such hour as may be agreed upon

III. The clerks shall be in attendance punctually at the hour stated, *fifteen minutes* after which the doors are to be closed, and the notes in the hands of the Banks not represented excluded until next exchange. Such Banks shall, however, retire, by granting bills on London in accordance with Rule VII., the notes brought into the exchange against them by other Banks

IV. Each Bank shall be represented by at least two clerks. On arriving at the Exchange Room, one of the clerks shall deliver the notes, and the other clerk shall remain in the box to receive the notes from the other Banks. Unless there is a clerk to receive them, on no account shall any notes be passed through the wickets. No one shall enter the box of another Bank—the door must be kept locked.

V. The clerks from each Bank shall *all* remain in the Exchange Room, until the whole of the notes received by them have been counted, and at least one clerk from each Bank shall remain until the whole of the notes delivered by that Bank have been counted. The notes received from any one Bank shall not be mixed with those received from the other Banks, until they have been found to agree with the specification received along with them. In case of a dispute arising on any occasion as to the amount contained in any parcel of notes, received or delivered by a Bank, which has infringed the rules in this clause, such Bank shall, in the absence of conclusive evidence in its favour, be held to be in the wrong.—To prevent any undue delay in counting the notes, each of the Banks shall provide a competent staff for that purpose, to the satisfaction of the settling Bank of the day

VI. The settlements shall be undertaken each alternate month by the Bank of Scotland, and by the Royal Bank of Scotland ; but neither Bank shall be held to incur any responsibility in respect of these transactions.—On Monday, Tuesday, and Thursday, the balances shall be included in the general settlement of the exchange and clearing. On Wednesday, Friday, and Saturday, unless when a general settlement falls on any of these days,

the settling Bank shall grant and receive vouchers for the balances, which shall be carried into the next day's clearing

VII. When the balances of the general settlement have been struck, the settling clerk of the day shall at once enter the particulars in a record provided for that purpose, and the Banks who are debtors in the settlement shall, on the same day before the close of business, send to the Banks who are creditors a bill or bills on London for the respective amounts due. These bills shall be drawn 5/8 days' date. The Banks drawing them shall bear the expense of the stamp-duty, and shall, on delivering them, pay in cash to the respective Banks in whose favour they are drawn, eight days' interest on the amounts, at the rate of 3 per cent. per annum

VIII. In the event of any exchange draft being dishonoured without prompt and satisfactory explanation of the cause, the Bank issuing such draft shall be immediately excluded from the Exchange Room and Clearing House

IX. When exchanges are established in provincial towns, the exchangeable notes received at the agencies there must wait for the return of the next local exchange day; and must under no pretext be forwarded to meet the exchanges in Edinburgh, or at the other agencies

X. It is further understood and agreed, in consideration of the circulation of each Bank (other than what may be issued against gold and silver coin), being fixed and limited by the Act 8 and 9 Vict., cap. 38, that the Banks shall bring to the Exchange Room regularly, at their head offices and agencies, all the exchangeable notes which they receive; and that under no circumstances shall any of the subscribing Banks issue the notes of another Bank of Issue in Scotland, without permission first asked and obtained

XI. The vouchers of the Glasgow Exchanges shall be conveyed by railway guard; and the letters containing the vouchers shall be delivered by the guard to the Clearing House messenger, to be delivered by him personally at the Banks to which they are addressed in Edinburgh

XII. The record of the general settlements shall be open for the inspection of any of the subscribing Banks, at such times as may be convenient

XIII. Any of the parties to this agreement shall be entitled to withdraw from it on giving three months' notice

On the London Clearing House

22. About 1775 the inconvenience of sending out to collect these charges led a number of the city bankers to organise an exchange among themselves, on a similar plan to that already practised among the banks in Edinburgh. They met in a room, and exchanged their mutual claims against each other, and paid only the difference in cash, or Bank notes. It is stated in the Bullion Report, that in the year 1810 there were 46 bankers who cleared ; that the average amount of drafts, &c., passed through the Clearing House every day was about £4,700,000, and that all the balances on this account was settled by about £220,000 in Bank notes. The Clearing House was merely an assemblage of private bankers ; when the joint stock banks were instituted in the city, they were rigidly excluded until 1854, when the intolerable inconvenience caused to them by the large amount of notes they had to keep idle to meet the "charges," set a question afloat of organising another Clearing House among themselves. Moreover, it is said, that the private bankers, themselves, felt the inconvenience of the heavy "charges" of the joint stock banks. Partly owing to these circumstances, and partly, we hope, owing to the feeling against the joint stock banks having abated, the London and Westminster, the Union, the London Joint Stock, the London and County, and the Commercial Banks, were admitted to the Clearing House in August, 1854, and the Southwark Branch of the London and Westminster, in August, 1855. The latter being remarkable, not only as a branch of a bank being treated as an independent bank, but also as not being in the City of London. The Bank of England was not admitted to the Clearing House till 1864.

Rules and Regulations to be observed in the London Clearing House

ORDINARY DAYS, EXCEPTING SATURDAYS

Morning Clearing to open at 10.30. Drafts, &c., to be received not later than 11. Morning Clearing must be closed by 12

Country Clearing to open at 12. Drafts including Returns, to be received not later than 12.30. Country Clearing must be closed by 2.15

Afternoon clearing to open at 2.30. Drafts, &c., to be received not later than 4. Returns to be received not later than 5, excepting on settling days, when the last delivery shall be at 4.15, and Returns at 5.15

Fourths of the Month

Morning Clearing to open at 9. Drafts, &c., to be received not later than 10. Morning Clearing must be closed by 12

Country Clearing to open at 12. Drafts, including returns, to be received not later than 12.30. Country Clearing must be closed by 2.15

Afternoon Clearing to open at 2.30. Drafts, &c., to be received not later than 4.15. Returns to be received not later than 5.15; excepting when the 4th of the month shall occur on a Saturday, when the Country Clearing shall close at 2, the Afternoon Clearing commence at 2, and the last delivery shall be at 3.30 and Returns at 4.30

Saturdays, (not being Fourths)

Morning Clearing to open at 9. Drafts, &c., to be received not later than 10. Morning Clearing must be closed by 11

Country Clearing to open at 11. Drafts including returns, to be received not later than 11.30. Country Clearing must be closed by 1.15

Afternoon Clearing to open at 1.30. Drafts, &c., to be received not later than 3. Returns to be received not later than 4

January 1st and December 31st

On these days an extension of a quarter of an hour shall be given to the last delivery, and to Returns; and a similar extension on days succeeding Bank Holidays

General Rules.

The total amount of the Morning and Country Delivery shall be agreed by each Clearer before leaving the Clearing House

All Clerks that are in the Clearing House by the time appointed for final delivery, shall be entitled to deliver their articles, though they may not have been able to pass them to the different desks before the clock strikes

All Returns in the course of delivery upon the stroke of the clock of the time appointed for final delivery, must be received by the Clearers, and credited the same day

Any Bank which has accepted and paid an article returned to it in error, may require repayment through the Clearing House on the following day

Notice shall be entered upon a Board at the Clearing House, giving monthly statements of those settling days at the Stock Exchange, upon which the time for receiving Returns is to be 5.15

With regard to all Drafts not crossed, and all Bills not receipted, sent to the Clearing House as Returns, the Clearer holding them must fully announce the particulars to the Clearing House, and if not claimed, the case must be represented to the Inspectors ; but on no account can the Clearer be allowed to debit the Clearing House with the amount until an owner can be found

No Return can be received without an answer in writing on the Return why payment is refused

It shall be sufficient in order that a Return shall be received and credited, that it shall have on it an answer, why returned ; and no Clearer shall refuse to pass to credit any Return that shall be so marked

All Returns charged upon the Balance Sheet must be marked up and agreed by the Clearer charging the same

All the differences arising from Marked Articles beyond the sum of £50 must be finally ascertained and placed to account, before the Clearer makes up his Balance Sheet

No Clearer shall be allowed to charge out Drafts in the Clearing-out Book at the Clearing House

All differences of more than £1,000 that may have been accidentally passed over at night, shall be settled by a transfer at the Bank of England, the first thing the next morning

The Inspectors are charged with the preservation of order and decorum in the Clearing House, and are instructed to report to the Committee of Bankers disorderly conduct on the part of any persons, calculated, in their opinion, to obstruct the adjustment of the business of the House

Each clearing bank keeps an account at the Bank of England, and the inspector of the Clearing house also keeps one. Printed lists of the clearing banks are made out for each bank, with its own name at the head, and the others placed in a column in alphabetical order below it. On the left side of these name is a column headed "Debtors," and on the right side are marked "Creditors." The clerk of the Clearing House then makes up the accounts between each bank, and the *difference* only is entered in the balance sheet, according as it is debtor or creditor. A balance is then struck between the debtor and creditor columns, and the paper delivered to the clerk, who takes it back to his own bank. The balance then is not paid to, or received from, the other bankers, as formerly, but it is settled with the Clearing House, which keeps an account itself at the Bank of England. The accounts are settled by means of a species of cheque appropriated to the purpose, called *transfer tickets*. They are of two colours, white and green, the white when the Bank has to pay a balance to the Clearing House, the green when it has to receive a balance from it. They are signed by some authorised official of the Bank. Thus, if the Bank is debtor on the balance, it gives a

White Ticket

SETTLEMENT AT THE CLEARING HOUSE.

London, 18

To the Cashiers of the Bank of England.

Be pleased to transfer from our Account the sum of

and place it to the credit of the Account of the Clearing Bankers, and allow it to be drawn for by any of them (with the knowledge of either of the Inspectors, signified by his countersigning the Drafts).

£

SETTLEMENT AT THE CLEARING HOUSE.

BANK OF ENGLAND,

18

A TRANSFER *for the sum of*

has this evening been made at the Bank from the account of Messrs.
to the account of the Clearing Bankers.

For the Bank of England.

£

The Certificate has been seen by me.

Inspector.

If the Bank is creditor on the balance, it gives a

Green Ticket

Settlement at the Clearing House.

London, 18

To the Cashiers of the Bank of England.

Be pleased to CREDIT our Account the Sum of

out of the money at the credit of the account of the Clearing Bankers.

£

Seen by me,

Inspector at the Clearing House.

Settlement at the Clearing House.

BANK OF ENGLAND,

18

The account of Messrs.
has this evening been CREDITED *with the Sum of*

out of the money at the credit of the account of the Clearing Bankers.

For the Bank of England.

£

By this admirable system, transactions to the amount of many millions daily are settled without the intervention of a single Bank note

CHAPTER XIX

ON COLLATERAL SECURITIES TAKEN BY BANKERS

1. Banking as we have seen deals exclusively with personal obligations. Bankers sell their own credit in exchange for the credit of other persons: and in all cases whatever these persons are liable and bound to discharge their obligations. Bankers, however, do take additional and collateral securities of various sorts, to make good any loss from their customers being unable to discharge their obligations

The first kind of these collateral securities which we shall consider is a banker's **Lien**

On a Banker's **Lien** *on his Customer's Securities*

2. When a customer has placed any Banking Securities in the hands of his banker, without specifically appropriating them to any purpose, the banker has the right to retain them until his customer has discharged all debts that may be due to him: even though the debt was not incurred, or the advance granted on the deposit of the Securities

This right of retention of Securities, placed unconditionally in his hands is termed a **Lien**

3. 1. A banker's general **Lien** is part of the Law Merchant, and is judicially noticed as such

Brandao v. *Barnett*, 12 C. & F., 787. *Bock v. Gorrissen*, 2 De G. F. & J., 434. *Jones* v. *Peppercorne*, Johns, 430

2. A banker has a general Lien upon all Banking, or Paper Securities placed in his hands as a *banker* by a customer, for his general balance

Such Paper Securities include Bills, Notes, Exchequer Bills, Stock, Coupons, Foreign Bonds, and others of a similar nature

And his Lien extends over these Securities, not only for debts which have already accrued, but for those which may accrue, such as bills discounted, or for a bill accepted for his customer's accommodation

Unless there be a special contract relating to these particular chattels, taking them out of the general rule

But to do this the particular contract must be inconsistent with the notion of a general Lien

Davis v. *Bowsher*, 5 T. R., 488. *Bolland* v. *Bygrave*, Ry. & Moo., 271. *Jourdaine* v. *Lefevre*, 1 Esp., 65. *Scott* v. *Franklin*, 15 East, 428. *Wylde* v. *Radford*, 33 L. J., Chanc., 51

3. But this general Lien does not extend to Securities which are not Banking, or Negotiable Securities, unless by special contract

A customer deposited with his banker a deed of conveyance including two distinct properties, with a memorandum pledging *one* of them as security for his general balance. Held that the banker had no lien on the other property

Wylde v. *Radford*, 33 L. J., Chan., 51

4. A customer by deed gave his banker a security over his estate to cover a debt which was then due. Held that it only applied to the actually existing debt, and was not a continuing security for the floating balance

Re Medewe's trust, 26 Beav., 588

5. A banker has no lien on any plate, jewels, cash, or securities contained in a box deposited with him in his character of Warehouseman, and not as banker (*a*)

Even though he has recovered judgment in an action against his customer for a balance due on his account (*b*)

Nor can money lodged with a banker for a specific purpose which fails, be retained by the banker against a debt due by the depositor when bankrupt (*c*)

(*a*) *Brandao* v. *Barnett*, 12 C. & F., 787. *Wylde* v. *Radford*, 33 L. J., Chanc., 51

(*b*) *Leese* v. *Martin*, L. R., 17 Eq., 224

(*c*) *Wright* v. *Watson*, 1 C. & E., 171

6. A banker has no Lien on a customer's balance for bills discounted for him, during the currency of the bills

Bower v. *Foreign & Col. Gas Co.*, 22 W. R., 740

7. If securities be offered to a banker for a loan which he refuses (*a*): or on a condition which is not fulfilled (*b*): the banker has no Lien on them for his general balance

(*a*) *Lucas* v. *Dorrien*, 7 Taunt., 278
(*b*) *Burton* v. *Gray*, 43 L. J., Chanc., 229

8. If a trustee, in violation of his trust, pledges securities with his banker, the trust will override the Lien, and the banker cannot retain them

Manningford v. *Toleman*, 1 Coll., C. C., 670. *Moore* v. *Jervis*, 2 Col., C. C., 60. *Pinkett* v. *Wright*, 2 Hare, 120; affirmed in *Dom. Proc.* as *Murray* v. *Pinkett*, 12 C. & F., 764. *Baillie* v. *MacKewan*, 35 Beav., 177. *Stackhouse* v. *Countess of Jersey*, 30 L. J., Chanc., 421

9. But where an executrix pledged title deeds with a bank, as a security for a loan, which she spent in violation of a trust, it was held that the bank, having no notice of the breach of trust, had a Lien on the deeds

Farhall v. *Farhall*, L. R., 7 Eq., 286

10. A banker has a Lien on Banking Securities pledged with him by a customer, if he has no notice, or reasonable cause to believe, that they belong to another person: but if he receives notice that they, in fact, do belong to another person, he has no Lien for any advance he may make after receiving such notice, nor for his general balance

Locke v. *Prescott*, 32 Beav., 261

11. A *cestui que trust* being indebted to a bank at which the trust account was kept, gave the bank a Lien on his share of the trust fund, and gave notice to one of the trustees to pay his share into his account with the bank. Held that this was a valid and irrevocable assignment of the fund, and that the bank's Lien prevailed against the customer's assignees in bankruptcy

Ex parte Steward, 3 M. D. & De G., 265

12. A debtor deposited title deeds with his creditor as security until his debt should be reduced to £100; he died indebted to his creditor in £274. Held that the creditor's Lien extended to the whole £274

Ashton v. *Dalton*, 2 Col., 565

13. An equitable mortgage by the occupier of lands, mills, houses, machinery, and premises, gives the depositee a Lien on all

fixtures, whether erected before or after the deposit, including those removable, as between landlord and tenant

Ex parte Price, 2 M. D. & De G., 518. *Ex parte Loyd*, 3 Deac. & C., 765. *Ex parte Broadwood*, 1 M. D. & De G., 631. *Ex parte Cowell*, 17 L. J., Bank., 16. *Ex parte Bentley*, 2 M. D. & De G., 591. *Ex parte Wilson*, 4 D. & Ch., 143. *Ex parte Cotton*, 2 M. D. & De G., 725. *Ex parte Reynal*, 2 M. D. & De G., 443

14. A banker took from one partner of a firm a legal mortgage over property which he knew belonged to the partnership, as security for a private debt of that partner. Held that the rights of the other partner prevailed over the banker's Lien

Cavander v. *Bulteel*, L. R., 9 Ch. Ap., 79

15. A customer kept three accounts at a bank, and received advances from the bank, which were entered in one of them. He sent securities to the bank to cover a fresh advance. Held that the bank had a Lien on these securities for the general balance

In re European Bank, L. R., 8 Ch. Ap., 41

16. A Company can create an equitable mortgage by the deposit of deeds, without complying with the formalities prescribed by their deed of constitution for executing legal mortgages ; and a banker is entitled to the same Lien on such deeds as if they had been deposited by a private person

Ex parte National Bank, L. R., 14 Eq., 507

17. A banker has no Lien on the balance of a partner on his separate account for a debt due to him from the firm

Watts v. *Christie*, 11 Beav., 546

18. A firm had an account with a bank, and one of the partners had also a separate account with it. The bank discounted a promissory note of the partner upon his depositing certain shares as security : these shares afterwards became the property of the firm, which failed, being indebted to the bank. Held that the bank held them only as security for the debt of the partner, and had no Lien on them for the debt due from the partnership

Ex parte McKenna, 30 L. J., Bank., 20

19. If a banker takes a security payable at a future day, his Lien is gone

Cowell v. *Simpson*, 16 Ves., 275. *Hewison* v. *Guthrie*, 3 Scott, 298

20. The Directors of a Colonial Banking Company were empowered by their Deed to issue shares on such terms as they

pleased ; and it was also provided that they should have a Lien on such shares for any debt of such shareholder. They issued shares, with powers of attorney, to enable the holders to remit them to England, and deal with them as negotiable securities. Held that they had no Lien on such shares

Hunter v. *Stewart*, 4 De G. F. & J., 168

21. K mortgaged to R certain securities. The value of the securities was paid into the hands of K's banker with whom his account was overdrawn. Held that the banker had a Lien on the amount so paid in for the amount of his debt

Roxburghe v. *Cox*, 17 Ch. D., 520

22. A Bank made advances on title deeds to land. The owner contracted to sell the land to a purchaser who had notice of the banker's claim ; and the bank had notice of the intended sale. If the bank makes further advances on the deeds without informing the purchaser, it has no Lien on the deeds for such further advance

London and County Bank v. *Ratcliffe*, 6 App. Cas., 722

23. A Company which had no power to borrow money overdrew their account with their bankers, and deposited certain private deeds of the members to the company. Held that the banker had no Lien on the deeds for the overdrawn account

Blackburn Building Society v. *Cunliffe*, 22 Ch. D., 61

24. A banker's Lien on securities taken by him *bonâ fide* from a customer is not affected by any equities between him and a third party

Misa v. *Currie*, 1 App. Cas., 544.

On **Goods** *taken as Security*

4. 1. If a banker takes **Goods** as a security for a loan, he ought to satisfy himself that his customer is entitled to them : because, by Common Law, the real owner will be able to recover them, or their value, from him, if unlawfully pledged

The principle of Common Law regarding the transfer of the Property in goods by a sale in market overt, does not apply to pawns

Marsden v. *Panshall*, 1 Vern., 407. *Paterson* v. *Tash*, Strange, 1178. *Hartop* v. *Hoare*. 3 Atk., 44. *Hoare* v. *Parker*, 2 T. R., 376. *Daubigny*

v. *Duval*, 5 T. R., 604. *Maccombie* v. *Davis*, 7 East, 5. *Graham* v. *Dyster*, 6 M. & S., 1. *Boyson v. Coles*, 6 M. & S., 14. *Queiroz* v. *Trueman*, 3 B. & C., 348

2. Goods were deposited as a security for a loan. The customer afterwards obtained further advances without referring to the goods. He died without paying off his debt to the banker. His executors claimed the goods on payment of the first loan only. Held, that the banker was entitled to have all the debt paid off. But if there had been bond creditors, or a bankruptcy, the banker could only have held the goods for the sum first advanced, and must have proved under the *fiat* for the rest

Demainbray v. *Metcalf*, Prec. Chanc., 419. *Adams* v. *Claxton*, 6 Ves., 229. *Vanderzee* v. *Willis*, 3 Bro., C. C., 21

3. Such transactions ought to be completed by a Bill of Sale, and registered under Act 17 & 18 Vict. (1854), c. 36

If the debtor is a trader the banker should also take possession of the goods or premises, as registration under the Bills of Sale Act only does not defeat the operation of the doctrine of "reputed ownership" in bankruptcy

Badger v. *Shaw*, 26 L. J., N. S., 73. *Ex parte Ashby, re Daniel*, 25 L. T., 188

4. A banker cannot take a Bill of Sale on the whole property of his debtor, as such an instrument is an act of bankruptcy

Lacon v. *Liffen*, 32 L. J., Chanc., 315. *Hassels* v. *Simpson*, 1 Doug., 89. *Giebert* v. *Spooner*, 1 M. & W., 714. *Smith v. Cannan*, 2 E. & B., 35, 45, 22 L. J., Q. B., 290. *Woodhouse* v. *Murray*, L. R., 2 Q. B., 638. *Ex parte Foxley, in re Nurse*, L. R., 3 Ch. Ap., 515

5. An instrument, stating that goods are deposited as a security for a loan, even though containing a power of sale in default of payment, does not require to be stamped as a mortgage deed

Harris v. *Birch*, 9 M. & W., 591. *Attenborough* v. *Commissioners of Inland Revenue*, 11 Exch., 461. See also *Franklin* v. *Neate*, 13 M. & W., 481

Policies of **Life Assurance** *as Security*

5. 1. A banker sometimes takes a Policy of Life Assurance as security for a Debt. In such case, he should give notice to the office of the assignment; as, in the event of his customer's bankruptcy, the Policy would vest in his assignees

It is a well-established principle that *Choses-in-Action*, or Rights, or a debt due to a trader, though assigned by him, is in his "order and disposition" in the event of his bankruptcy, even though the instrument recording the obligation be delivered over, unless notice of the assignment has been duly given to the obligor

Ryall v. *Rowles*, 1 Ves., sen., 348. *Ex parte Arkwright*, 3 M. D. & De G., 143. *Ex parte Wood*, 3 M. D. & De G., 315. *Thompson* v. *Speirs*, 13 Sim., 469. *Ex parte Wilkinson*, 13 Sim., 475. *Belcher* v. *Bellamy*, 2 Exch., 303. *Thompson* v. *Tomkins*, 2 Drew. & Sim., 8

2. Notice, as a rule, should be given to the officer representing the Company, who may either be the Chairman, the Directors, or the Secretary, according to the Deed of Constitution

Where a Company has authorised their agents to receive notices of assignments, it was held that where one of their agents had acted as attorney for the assignor and assignee of a Policy, that was sufficient notice to the Company

Gale v. *Lewis*, 9 Q. B., 730

3. But if the agent is not agent for that particular purpose, his knowledge of the assignment is not sufficient

Ex parte Patch, 7 Jur., 820. 12 L. J., N. S., Bank., 44

4. Such notice need not be in writing, verbal notice is sufficient; even though the office refuses to receive verbal notice

North British Insurance Co. v. *Hallet*, 7 Jur., N. S., 1263. *Ex parte Masterman*, 2 Mont. & Ay., 209. *Ex parte Littledale*, 6 M. D. & De G., 74

5. If the assignee has sent notice by post to the obligor, and the assignor becomes bankrupt before the notice reaches the obligor in the course of post, that is sufficient to take the case out of the Statute

Belcher v. *Bellamy*, 2 Exch., 303

6. Though the assignee is a partner in a mutual office, that is not sufficient notice to the Company

Thompson v. *Speirs*, 13 Sim., 469. *Ex parte Wilkinson*, 13 Sim., 475

7. In the case of an equitable mortgage by the mere deposit of the Policy, the assignees of a bankrupt cannot recover the Policy itself at law: but they may claim the debt from the Company, and give a valid discharge for it

Gibson v. *Overbury*, 7 M. & W., 555

8. If a Policy be deposited by way of equitable mortgage, the *onus* lies upon the assignees of the bankrupt to prove that the notice of assignment was not given to the office before the bankruptcy

Ex parte Stevens, 4 Dec. & Ch., 117

9. The banker must also have possession of the Policy. A memorandum of deposit of securities was given to a banker, stating that a Policy of Insurance on the life of the depositor was among them. The Policy, however, was not delivered, and was in the possession of the depositor at the time of his bankruptcy. Held that the Policy passed to his assignees, and the banker ranked among the general creditors

Ex parte Halifax, 2 M. D. & De G., 544

10. A condition of a Policy of Life Assurance was that it should be void if the assured died by his own hand, unless it had been assigned for valuable consideration six months before his death. The holder deposited it with his bankers, with a letter charging it with the payment of any debts that might be due to them at the time of his death; and three years afterwards committed suicide, being indebted his bankers. Held that the bankers were entitled to recover

Jones v. *Consolidated Investment and Insurance Co.*, 26 Beav., 256

11. Bankers who had two Policies of Life Assurance deposited with them gave no notice to the offices; but the assured mentioned in conversation with the secretaries that the Policies were held by his bankers. He died bankrupt, and Stuart, V. C., held that the Policies remained in his order and disposition, and that his assignees were entitled to the proceeds

Edwards v. *Martin*, L. R., 1 Eq., 121

On **Title Deeds** *taken as Security*

6. 1. A banker frequently takes a deposit of Title Deeds by way of equitable mortgage to secure an advance. In all such cases he should have a written memorandum distinctly stating the purpose for which the deposit is made. A written memorandum of deposit is not, indeed, necessary, for there may be a valid deposit in equity without even a word spoken, when the possession of the securities cannot be accounted for in any other

way, the holder being a stranger to the title and deeds (*a*). But it is laid down that if there is no memorandum of deposit, the Court leans against considering the deposit as security for an antecedent debt (*b*)

(*a*) *Bozon* v. *Williams*, 3 Y. & J., 150
(*b*) *Ex parte Martin*, 4 Deac. & Ch., 457

2. If deeds are deposited with a person expressly as a security for a future advance, the creditor has no lien on them for an antecedent debt

Mountford v. *Scott*, 1 Turn. & Russ., 274

3. But if a banker has completed his equitable title by obtaining possession of the title deeds along with a memorandum stating the purpose of the deposit to be to secure payment of the mortgagor's antecedent debt and interest, as well as all future advances, he will be able to enforce his claim against all judgments of any sort recovered against the mortgagor after the date of the equitable mortgage

Whitworth v. *Gaugain*, 3 Hare, 416 affirmed, 1 Phil., 728. *Casbert* v. *Att. General*, 6 Price, 411

4. There must be an actual deposit of the title deeds to exclude the operation of the Statute of Frauds. An order to a third party to deposit a lease, when executed, is not sufficient

Ex parte Perry, 3 M. D. & De G., 252

5. An agreement to execute a mortgage with a delivery of the title deeds to have the agreement carried out, is an equitable mortgage from the date of the agreement

Edge v. *Worthington*, 1 Cox, 211. *Ex parte Bruce*, 1 Rose, 374. *Hockley* v. *Bantock*, 1 Russ., 141. *Keys* v. *Williams*, 3 Y. & Col., C. C., 55. *Bulfin* v. *Dunne*, 12 Ir. Ch. Rep., 67

6. To constitute an equitable mortgage it is not necessary that all the title deeds should be deposited, provided that real and material portions of them are

Ex parte Chippendale, 1 Deac., 67. *Lucas* v. *Allen*, 26 L. J., Ch., 18

7. A memorandum accompanying title deeds, stating the purpose for which they are deposited, is not an agreement for a mortgage, and does not require to be stamped

Meek v. *Bayliss*, 31 L. J., Ch., 448

8. A verbal agreement to deposit a lease when executed is not an equitable mortgage

Ex parte Coombe, 4 Madd., 249

9. To create an equitable sub-mortgage by deposit of deeds originally deposited as an equitable mortgage, it is not necessary to deposit with the second depositee the written memorandum deposited with the first

Ex parte Abel Smith, 2 M. D. & De G., 587

10. The expression "may advance," in the memorandum given with title deeds as an equitable mortgage, may include past as well as future advances, if it appears that the parties intended it

Ex parte Farley, 1 M. D. & De G., 683. *Ex parte Abel Smith*, 2 M. D. & De G., 587

11. A legal mortgage cannot be extended by parol (*a*); but an equitable mortgage may (*b*)

(*a*) *Ex parte Hooper*, 2 Rose, 328

(*b*) *Ex parte Langston*, 1 Rose, 26. *Ex parte Kensington*, 2 Ves. & Bea., 79. *Ex parte Lloyd*, Gl. & Jam., 389. *Ex parte Nettleship*, 2 M. D. & De G., 124

12. An equitable mortgage is the same in effect as a legal mortgage, and a mortgagor will have six months to redeem

Parker v. *Housefield*, 2 My. & K., 419. *Throp* v. *Gartside*, 2 Y. & Col. Ex. Eq., 730. *Meller* v. *Woods*, 1 Keen, 16. But see 15 & 16 Vict. (1852), c. 86, s. 48

13. An equitable mortgagee, by deposit of a lease, is not compellable to take a legal assignment of the lease at the suit of the lessor, even though he has entered into possession of the premises and paid rent: nor is he liable to the lessor upon the covenants of the lease, as there is no privity of contract between him and the lessor

Moore v. *Greg*, 2 Phil., 717

14. If deeds are deposited with a person as an equitable mortgage, they are not to be considered as an equitable mortgage for a loan by another person, without a memorandum in writing

Ex parte Whitbread, 1 Rose, 299

15. A person conveyed certain property to trustees by a post nuptial settlement. Having obtained the deeds from the trustees, he deposited them with his bankers as an equitable mortgage for a loan. Held that the banker was not a purchaser within 27 Eliz. (1585), c. 4, s. 2, and the trustees were entitled to recover the deeds

Kerrison v. *Dorrien*, 9 *Bing.*, 76

16. A conveyance of a house and furniture was deposited as a security for a debt, with a memorandum stating that it was the deposit of the title deeds of an *estate*. Held that this was not an equitable mortgage of the furniture: if the intention had been to include the furniture, it should have been so stated in the memorandum, and a schedule of the articles given (*a*)

But when the lease of a house was deposited as an equitable mortgage, and the premises were sold along with the goodwill of the business carried on on the premises; and the produce of the sale of the lease and goodwill was insufficient to satisfy the debt, the depositee was held entitled to the whole of the proceeds, as the goodwill was the incident of the lease (*b*)

(*a*) *Ex parte Hunt*, 1 M. D. & De G., 139
(*b*) *Chissum* v. *Dewes*, 5 Russ., 29

17. A mortgagor granted a mortgage to secure an antecedent debt, and future advances to a limited amount: he then granted a second mortgage of the same property to another person on similar terms: each party was aware of the mortgage of the other. The first mortgagee made advances to the mortgagor after he was aware that the second mortgagee made advances to him on the security of the second mortgage: he cannot claim that the advances which he had made subsequently to this knowledge should have priority over the advances made by the second mortgagee

Hopkinson v. *Rolt*, 9 H. L. Ca., 514

18. A misdirection of the mortgagor's interest in land will not invalidate an equitable mortgage

Ex parte Glyn, 1 M. D. & De G., 29

19. An equitable mortgage may be created by a deposit of copy of Court Roll

Ex parte Warner, 19 Ves., 202. *Winter* v. *Lord Anson*, 3 Russ., 493. *Whitbread* v. *Jordan*, 1 Y. & Coll., Ex. Eq., 303. *Tylee* v. *Webb*, 6 *Beav.*, 552

20. If deeds including several estates are deposited as an equitable mortgage, with a memorandum specifying only one as mortgaged, it is not a mortgage of the other estates mentioned in the deeds

Wylde v. *Radford*, 33 L. J., Chanc., 51

21. If a trustee fraudulently deposit title deeds as an equitable mortgage, the trust will prevail over the mortgage

Manningford v. *Toleman*, 1 Coll., 670. *Bailie* v. *McKewen*, 35 *Beav.*, 177

22. A customer deposited Title Deeds of premises to secure a debt without any memorandum. The equitable mortgage was a security for further advances by virtue of the banker's general lien on the deeds

Ex parte Tweedy, 5 Ch. D., 559

On Securities given by Third Parties to Bankers to secure advances to their customers

7. We have now given what appears to us to be necessary to explain the relations between a banker and his customer, and securities given by the customer; we have now to consider the case where strangers give securities to bankers on behalf of their customers, which are much more strictly interpreted than securities given by the customer himself

The general rule is this—That if a person gives a guaranty to a banking firm to secure advances made or to be made to another firm as customers, if any change takes place in either firm, either from death or the withdrawal of any partner; or the adoption of a new one; the guaranty holds good as to any operations which have already been commenced but not completed before the change: as, for instance, to bills accepted, discounted, or negotiated before the change, but which did not become payable till after it; but it then becomes *ipso facto* void and determined as regards any new transactions

These doctrines having been established by a host of cases were confirmed by Statute, 19 & 20 Vict. (1856), c. 97, s. 4—

"No promise to answer for the debt, default, or miscarriage of another, made to a firm consisting of two or more persons, or to a single person trading under the name of a firm: and no promise to answer for the debt, default, or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise, in respect of anything done or omitted to be done, after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties that such promise shall continue to be binding, notwithstanding such change, shall appear, either by express stipulation, or by necessary implication from the nature of the firm, or otherwise."

If, therefore, it be the intention that the guaranty should be a continuing security, notwithstanding any change in either or both of the firms, such a stipulation must be clearly set forth in it

A guaranty is also vitiated if the banker deviates in the slightest degree from its precise terms, for there is, in fact, a dealing between the banker and his customer to which the guarantor has never consented

1. Before 1856 a guaranty required to have the consideration it was given for stated on the face of it ; but by the Mercantile Law Amendment Act, 18 & 19 Vict. (1856), c. 97, s. 3, it is enacted—

"No special promise to be made by any person after the passing of this Act to answer for the debt, default, or miscarriage of another person, being in writing, and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorised, shall be deemed invalid to support an action, suit or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document"

Evans v. *Whyle*, 5 Bing., 485. *Eyre* v. *Bartrop*, 3 Madd., 221. *Archer* v. *Hale*, 4 Bing., 464. *Witcher* v. *Hall*, 5 B. & C., 269. *Bonar* v. *Macdonald*, 3 H. L. Ca., 226

2. If the banker advances to his customer a sum in excess of the sum guaranteed, that is not a variation of the terms of the guaranty

Sellers v. *Jones*, 16 M. & W., 112. *Parker* v. *Wise*, 6 M. & S., 239. *Laurie* v. *Scholefield*, L. R., 4 C. P., 622

3. If a surety guarantees a fixed sum, and the banker advances to his customer beyond the sum fixed, and the customer becomes bankrupt, the surety is only liable for the sum he guaranteed, less the amount of any dividend on the bankrupt's estate

Ex parte Rushforth, 10 Ves., 409. *Paley* v. *Field*, 12 Ves., 435. *Bardwell* v. *Lydall*, 7 Bing., 489. *Raikes* v. *Todd*, 8 Ad. & E., 846. *Ex parte Brook*, 2 Rose, 334. *Ex parte Holmes*, M. & Ch., 301. *Gee* v. *Pack*, 33 L. J., Q. B., 49

4. But a guaranty is not determined by the death of the guarantor, so long as the obligation is uncompleted

Bradbury v. *Morgan*, 1 H. & C., 249

5. A guaranty, even though it states a specified time, is always

countermandable—except, of course, as regards any advances made under it

Offord v. *Davies*, 12 C. B., N. S., 748

6. Any variation between the precise terms of the guaranty and the actual dealing between the banker and the debtor will avoid the guaranty

Glyn v. *Hertel*, 8 Taunt., 208. *Bacon* v. *Chesney*, 1 Stark., N. P. C., 192. *Bonser* v. *Cox*, 6 Beav., 110. *The General Steam Navigation Co.* v. *Rolt*, 6 C. B., N. S., 550. *Calvert* v. *the London Docks Co.*, 2 Keen, 638

7. A guaranty will be construed most strictly against the grantor

Mason v. *Pritchard*, 12 East., 227. *Mayer* v. *Isaac*, 6 M. & W., 605. *Wood* v. *Priestner*, L. R., 2 Exch., 66

8. An omission or misstatement of facts which affects the guarantor's responsibility will avoid the guaranty (*a*)

But an omission to state facts which do not affect the guarantor's responsibility will not do so (*b*)

If the creditor knows that the principal has committed an act of dishonesty, and does not inform the surety, he is discharged (*c*)

(*a*) *Pidcock* v. *Bishop*, 3 B. & C., 605. *Jackson* v. *Duchaire*, 3 T. R., 551. *Mayhew* v. *Crickett*, 2 Swanst., 189. *Glyn* v. *Hertel*, 8 Taunt., 208. *Stone* v. *Compton*, 5 Bing., N. C., 142. *Pledge* v. *Buss*, John, 663. *Swan* v. *Bank of Scotland*, 1 Deac., 272. *Blest* v. *Brown*, 8 Jur., N. S., 602. *Lee* v. *Jones*, 17 C. B., N. S., 482

(*b*) *Hamilton* v. *Watson*, 12 Cl. & F., 109. *North British Insurance Co.* v. *Lloyd*, 10 Exch., 523

(*c*) *Phillips* v. *Foxall*, L. R., 7 Q. B., 666

9. If the creditor, without the surety's knowledge and consent, gives the principal debtor time by a positive legal contract which suspends his right of action against him—and is not a mere forbearance to sue: or if he obtains execution against him and then withdraws it (1): or agrees that the debtor's estate shall be administered for the benefit of the creditors, "in like manner as if he had obtained a discharge in bankruptcy" (2): the surety is discharged (*a*)

But not if it is done with the surety's knowledge and consent (*b*)

(*a*) *Nisbet* v. *Smith*, 2 Bro., C. C., 579. *Rees* v. *Berrington*, 2 Ves., jun., 540. *Samuell* v. *Howarth*, 3 Mer., 272. *Creighton* v. *Rankin*, 7 Cl. & F., 346. *Eyre* v. *Everett*, 2 Russ., 381. *Heath* v. *Key*, 1 Y. & Jer., 434. *Howell* v. *Jones*, 1 C. M. & R., 97. *Combe*

v. *Woolf*, 8 Bing., 156. *Orme* v. *Young*, Holt, N. P. C., 84. *Boultbee* v. *Stubbs*, 18 Ves., 20. *Bank of Ireland* v. *Beresford*, 6 Dow., 233. *Perfect* v. *Musgrave*, 6 Price, 111

(1) *Mayhew* v. *Crickett*, 2 Swanst., 191

(2) *Cragoe* v. *Jones*, L. R., 8 Exch., 81

(*b*) *Tyson* v. *Cox*, Turn. & Russ., 395

10. But an additional and collateral security which does not suspend the creditor's right of action does not discharge the surety

Twopenny v. *Young*, 3 B. & C., 208. *Bell* v. *Banks*, 3 M. & G., 258

11. If the principal debtor is discharged by operation of law, as by a certificate of bankruptcy, the surety is not discharged

Brown v. *Carr*, 7 Bing., 508. *Langdale* v. *Parry*, 2 Dow. & Ry., 337

12. If the creditor takes a security of a higher order, such as a specialty instead of a simple contract, the latter is "merged" and the surety is discharged

But if the remedy against the surety is expressly reserved in the specialty, the surety is not released, even though it is given without his knowledge

For a specialty to operate as a merger it must coincide exactly in amount and with the parties, with the simple contract

Ex parte Carstairs, Buck, B. C., 560. *Ex parte Glendinning*, Buck, B. C., 517. *Ex parte Gifford*, 6 Ves., 805. *Boales* v. *Mayor*, 19 C. B., N. S., 76. *Kearsley* v. *Cole*, 16 M. & W., 128. *Hooper* v. *Marshall*, L. R., 5 C. P., 4. *Bateson* v. *Gosling*, L. R., 7 C. P., 9. *Teede* v. *Johnson*, 11 Exch., 840

13. If the holder of a security agrees with the principal debtor to give time to the surety, he thereby discharges the surety

Oriental Financial Co. v. *Overend & Co.*, L. R., 7 Ch. Ap., 142

On **Dock Warrants** *and* **Bills of Lading**

8. Bills of Lading and Dock Warrants are titles to certain specific goods; they therefore follow the law of goods and are Assignable Instruments, but not Negotiable Instruments

Hence the real owner does not lose his Property in them though they have been lost or stolen, and sold for value to an innocent purchaser. He can recover them in the hands of an

innocent holder for value just in the same way as he can recover the goods themselves

Gurney v. *Behrend*, 3 El. & Bl., 622. *Mangles* v. *Dixon*, 3 H. L., Ca. 702

The Factors' Acts

It was established by a long series of cases that a factor could not *pledge* the goods of his principal by indorsing and delivering the bill of lading, although he might *sell* them, and confirmed by—

Martini v. *Coles*, 1 M. & S., 140. *Shipley* v. *Kymer*, 1 M. & S., 484. *Newsom* v. *Thornton*, 6 East., 17

But this doctrine was altered by Statute 4, Geo., 4 (1824), c. 83, amended Statute 6 Geo., 4 (1826), c. 94, commonly called the Factors' Act

By this latter Act it was enacted, § 1—

"Any person or persons intrusted for the purpose of consignment or of sale with any goods, wares, or merchandise, and who shall have shipped such goods, wares, or merchandise, in his, her, or their name or names, and any person or persons in whose name or names any goods, wares, or merchandise shall be shipped by any other person or persons, shall be deemed and taken to be the true owner or owners thereof, so far as to entitle the consignee or consignees of such goods, wares, and merchandise to a lien thereon, in respect of any money or negotiable security or securities advanced or given by such consignee or consignees to or for the use of the person or persons in whose name or names such goods, wares, or merchandise shall be shipped, or in respect of any money or negotiable security or securities received by him, her, or them to the use of such consignee or consignees in the like manner to all intents and purposes as if such person or persons was or were the true owner or owners of such goods, wares, and merchandise.

"Provided such consignee or consignees shall not have notice by the Bill of Lading for the delivery of such goods, wares, and merchandise, or otherwise, at or before the time of any advance of such money or negotiable security, of such receipt of money or negotiable security in respect of which such lien is claimed, that such person or persons so shipping in his, her, or their own name

or names, or in whose name or names any goods, wares or merchandise shall be shipped by any person or persons, is or are not the actual and *bonâ fide* owner or owners, proprietor or proprietors, of such goods, wares, and merchandise so shipped as aforesaid"

By S. 2.—"Any person or persons *intrusted with and in possession* of any Bill of Lading, India Warrant, Dock Warrant, Warehouse keeper's certificate, Wharfinger's certificate, Warrant or Order for delivery of goods, shall be deemed and taken to be the true owner or owners of the goods, wares, and merchandise described and mentioned in the said several documents hereinbefore stated respectively, or of them, so far as to give validity to any contract or agreement thereafter to be made or entered into by such person or persons so *intrusted and in possession* as aforesaid, with any person or persons, body or bodies politic or corporate, for the sale or disposition of the said goods, wares, and merchandise, or any part thereof, *or for the deposit and pledge thereof, or any part thereof*, as a security for any money or negotiable instrument or instruments advanced or given by such person or persons, body or bodies politic and corporate, upon the faith of such several documents or either of them

"Provided such person or persons, body or bodies politic or corporate, shall not have notice by such documents or either of them or otherwise, that such person or persons so intrusted as aforesaid is or are not the actual and *bonâ fide* owner or owners, proprietor or proprietors, of such goods, wares, or merchandise, so sold or deposited, or pledged as aforesaid"

As to the meaning of "a person intrusted with" the documents mentioned, see—

> *Close* v. *Holmes*, 2 Moo. & Rob., 22. *Philips* v. *Huth*, 6 M. & W., 572. *Hatfield* v. *Phillips*, 9 M. & W., 647; 14 M. & W., 665. *Bonzi* v. *Stewart*, 5 Scott., N. R., 1; 4 M. & G., 295

In consequence of these decisions, the Statute 5 & 6 Vict. (1842), c. 39, was passed, which enacted, s. 1—"Any agent who shall hereafter be intrusted with the possession of goods, or of the documents of title to goods, shall be deemed and taken to be the owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge, lien, or security *bonâ fide* made by any person with such agent so intrusted as aforesaid, as well for any original loan, advance, or payment, made upon the

security of such goods or documents, or also for any further or continuing advance in respect thereof, and such contract or agreement shall be binding upon and good against the owner of such goods, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent"

S. 2 enacts—"Where any such contract or agreement for pledge, lien, or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise or documents of title, or negotiable security, upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent, such contract and agreement, if *bonâ fide* on the part of the person with whom the same may be made, shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of the Act, and shall be as valid and effectual, to all intents and purposes, and to the same extent, as if the consideration for the same had been a *bonâ fide* present of money

"Provided that the lien acquired under such last-mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which, or the document of title to which, or the negotiable security which shall be delivered up and exchanged"

S. 3.—This Act and every matter and thing herein contained, shall be deemed and construed to give validity to such contracts and agreements only, and to protect only such loans, advances, and exchanges, as shall be made *bonâ fide*, and without notice that the agent making such contracts or agreements as aforesaid, has not authority to make the same, or is acting *malâ fide* in respect thereof against the owner of such goods and merchandise

"Nothing herein contained shall be construed to extend or protect any lien or pledge for or in respect of any antecedent debt, owing from any agent to any person with or to whom such lien or pledge shall be given, nor to authorise any agent intrusted as aforesaid in deviating from any express orders or authority received from the owner: but that for the purpose and to the intent of protecting all such *bonâ fide* loans, advances, and exchanges as

aforesaid (though made with notice of such agent not being the owner, but without any notice of the agent's acting without authority), and to no further or other interest or purpose such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods"

S. 4.—"Any Bill of Lading, India Warrant, Dock Warrant, Warehouse keeper's Certificate, Warrant, or Order for delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising, or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented, shall be deemed and taken to be a Document of Title within the meaning of this Act: and any agent intrusted as aforesaid and possessed of any such document or title whether derived immediately from the owner of such goods, or obtained by reason of such agent's having been intrusted with the possession of the goods, or of any other documents of title thereto, shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid, and all contracts pledging or giving a lien upon such documents of title as aforesaid, shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates: and such agent shall be deemed to be possessed of such goods or documents, whether the same shall be in his actual custody, or shall be held by any other person subject to his control or for him, or on his behalf

"Whether any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid, on the faith of any contract or agreement in writing to assign, deposit, transfer, or deliver such goods or documents of title as aforesaid, and such goods or documents of title shall actually be received by the person making such loan or advance, without notice that such agent was not authorised to make such pledge or security, every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods and documents of title within the meaning of this Act, though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto

"Any contract or agreement whether made direct with such agent as aforesaid, or with any clerk or other person on his behalf, shall be deemed a contract or agreement with such agent: and any payment made, whether by money or bills of exchange, or other negotiable security, shall be deemed and taken to be an advance within the meaning of this Act: and an agent in possession as aforesaid of such goods or documents, shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof, unless the contrary can be shewn in evidence"

By 6 Geo. 4 (1825), c. 94, s. 3, it is enacted—"In case any person or persons, body or bodies politic or corporate, shall accept and take any such goods, wares, or merchandise, in deposit or pledge from any such person or persons so in possession and in trust as aforesaid, without notice as aforesaid, as a security for any debt or demand due and owing from such person or persons so intrusted and in possession as aforesaid, to such person or persons, body or bodies politic and corporate, before the time of such deposit or pledge, then and in that case such person or persons, body or bodies politic or corporate, so accepting or taking such goods, wares, or merchandise in deposit or pledge, shall acquire no further or other right, title or interest in or upon, or to the said goods, wares, or merchandise, or any such document as aforesaid, than was possessed, or could or might have been enforced by the said person or persons so possessed and intrusted as aforesaid, at the time of such deposit or pledge as a security as last aforesaid: but such person or persons, body or bodies politic or corporate, so accepting or taking such goods, wares, or merchandise in deposit or pledge, shall and may acquire, possess and enforce, such right, title or interest as was possessed and might have been enforced by such person or persons so possessed and intrusted as aforesaid"

As to what constitutes antecedent debt, see—

Jewan v. *Whitworth*, L. R., 2 Eq., 692. *Macnee* v. *Gorst*, L. R., 4 Eq., 315

S. 4.—"It shall be lawful to and for any person or persons body or bodies politic and corporate, to contract with any agent or agents intrusted with any goods, wares, or merchandise, or to whom the same may be consigned, for the purchase of any such goods, wares, or merchandise, and to receive the same and pay for

the same to such agent or agents: and such contract and payment shall be binding upon and good against the owner of such goods, wares, and merchandise, notwithstanding such person or persons, body or bodies politic or corporate, shall have notice that the person or persons making and entering into such contract, or on whose behalf such contract is made or entered into, is an agent or agents

"Provided such contract and payment be made in the usual and ordinary course of business, and that such person or persons, body or bodies politic or corporate, shall not, when such contract is entered into or payment made, have notice that such agent or agents is or are not authorised to sell the said goods, wares, and merchandise, or to receive the said purchase money"

On this section see—

Baines v. *Swainson*, 4 B. & Sm., 270. *Fuentes* v. *Montis*, L. R., 3 C. P., 268: 4 C. P., 93. *Cole* v. *North Western Bank*, L. R., 9 C. P., 470: affirmed in Ex. Ch., 10 C. P., 354

S. 5.—"It shall be lawful to and for any person or persons, body or bodies politic or corporate, to accept and take any such goods, wares, and merchandise, or any such document as aforesaid, in deposit or pledge from any such factor or factors, agent or agents, notwithstanding such person or persons, body or bodies politic or corporate, shall have such notice as aforesaid that the person or persons making such deposit or pledge is or are a factor or factors, agent or agents; but then and in such case such person or persons, body or bodies politic or corporate, shall acquire no further or other right, title or interest in or upon or to the said goods, wares, or merchandise, or any such document as aforesaid, for the delivery thereof, than was possessed or could or might have been enforced by the said factor or factors, agent or agents, at the time of such deposit or pledge as a security as last aforesaid: but such person or persons, body or bodies politic or corporate, shall and may acquire, possess and enforce such right, title or interest, as was possessed and might have been enforced by such factor or factors, agent or agents, at the time of such deposit or pledge, as aforesaid

On this section see—

Blandy v. *Allan*, Dans. & Ll., 22. *Fletcher* v. *Heath*, 7 B. & C., 517. *Thomson* v. *Farmer*, 1 Moo. & Ma., 48

9. 1. These Statutes are limited to mercantile transactions

Wood v. *Rowcliffe*, 6 Hare, 183. *Monk* v. *Whittenbury*, 2 B. & Ad., 484. *Lamb* v. *Attenborough*, 1 B. & Sm., 831. *Jenkyns* v. *Usborne*, 8 Scott., N. R., 505. *Van Casteel* v. *Booker*, 2 Exch., 691

See also—

Gobind Chunder Sein v. *Ryan*, 9 Moo. Ind. Ap., 140. *Sheppard* v. *Union Bank of London*, 7 H. & N., 661

2. Dock Warrants are assignable instruments, and being duly indorsed and delivered, the property in the goods they represent passes by the delivery of the instrument, so as to empower the holder to take possession of the goods. And if the Assignor becomes bankrupt his assignees have no title to the goods

Zwinger v. *Samuda*, 1 Moor, 12. *Lucas* v. *Dorrien*, 1 Moor, 29. *Spear* v. *Travers*, 4 Camp., 251

3. A broker gave a banker a letter of hypothecation of goods, promising to lodge the warrants for them next day. Having failed to do so after repeated applications, the banker obtained the keys of the warehouse and took possession of the goods. Bacon, V. C., held that the banker had acquired a good title to the goods under the Factors' Act, 5 & 6 Vict. (1842), c. 39, s. 4

Ex parte North Western Bank, re Slee, 42 L. J., Bank, 6

4. Bills of Lading made out to the order of the shipper or consignee are instruments assignable by indorsement and delivery, so as to transfer the property in the goods to a *bonâ fide* indorsee for value, in the absence of any notice of fraud, insolvency, or want of title in the indorser

If the consignee or vendee becomes insolvent, the unpaid vendor or consignor may stop the goods *in transitu* before they have been delivered to the vendee, consignee, or his agent

But if the consignee or vendee has assigned the Bill of Lading for valuable consideration to an indorsee, who has no notice of his fraud or insolvency, such an indorsement and delivery will defeat the unpaid vendor's right of stoppage *in transitu*

Lickbarrow v. *Mason*, 2 T. R., 63. Smith's L. C., vol. I., p. 756. *Cuming* v. *Brown*, 9 East., 506. *Gurney* v. *Behrend*, 3 El. & Bl., 622. *The Marie Joseph*, L. R., 1 P. C., 219. *The Argentina*, L. R., 1 Ad. & Ec., 370. *Rodger* v. *The Comptoir d'Escompte de Paris*, L. R., 2 P. C., 393. *Gilbert* v. *Guignon*, L. R., 8 Ch., Ap. 16

5. The forbearance or release of an antecedent debt is not a good consideration for an engagement to indorse Bills of Lading

which had not yet come into the consignee's hands, so as to defeat the unpaid vendor's right of stoppage *in transitu*.

Rodger v. *The Comptoir d'Escompte de Paris*, L. R., 2 P. C., 393

6. A Bill of Lading in which the words "or order or assigns" are omitted is not an assignable instrument. [But this is cured now by the Supreme Court of Judicature Act]

But where the consignee of a Bill of Lading without the words "or order or assigns" had actually received the goods and had assigned them over to a Bank for valuable consideration, who thus united in themselves the legal and equitable title to the goods, the omission of the words "or order or assigns" is not sufficient to give the indorsees constructive notice of some equitable arrangement between the consignor and the assignee

Henderson v. *The Comptoir d'Escompte de Paris*, L. R., 5 P. C., 253

7. When a Bank had discounted Bills of Exchange to a large amount on the express agreement that they should be accompanied by shipping documents, which the sellers failed to give; and, being pressed by the Bank, indorsed another Bill of Lading in substitution of the documents first promised, it was held to be indorsed for valuable consideration, and to defeat the consignor's right of stoppage *in transitu*

The Chartered Bank of India, Australia, and China v. *Henderson*, L. R., 5 P. C., 501

8. A person to whom an indorsed Bill of Lading was sent by mistake by the consignor cannot assign it so as to defeat *bonâ fide* assignees of others of the same set of Bills of Lading for value

Gilbert v. *Guignon*, L. R., 8 Ch. p., 16. *Schuster* v. *MacKellar*, 7 E. & B., 704

9. If the indorsee knew that the consignee was in insolvent circumstances, and had not paid for the goods; and that no bill had been given for them, or that one having been accepted, it was not likely to be paid, the assignment is void against the unpaid vendor

Cuming v. *Brown*, 9 East., 506

10. Formerly the indorsement and delivery of a Bill of Lading was sufficient to transfer the property in the goods, but it did not transfer the contract to the assignee. But the 18 & 19 Vict. (1855), c. 111, enacts—

S. 1.—"Every consignee of goods named in a Bill of Lading,

and every indorsee of a Bill of Lading *to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or indorsement,* shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods, as if the contract contained in the Bill of Lading had been made with himself"

Short v. *Simpson*, L. R., 1 C. P., 248. *The St. Cloud*, Br. & Lush, Ad. C. 4. *Dracachi* v. *The Anglo-Egyptian Bank*, L. R., 3 C. P., 190. *The Freedom*, L. R., 3 P. C., 594. *Fox* v. *Nott*, 6 H. & N., 630.

11. A nude assignee of the Bill of Lading cannot sue in a Court of Common Law under the Statute 18 & 19 Vict. (1855), c. 111, nor in the Admiralty Court, under the Stat. 24 Vict. (1861), c. 12

The St. Cloud, Br. & Lush., Ad. Ca., 4.

S. 2.—"Nothing herein contained shall prejudice or affect any right of stoppage *in transitu,* or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason, or in consequence of, such consignment or indorsement"

S. 3.—"Every Bill of Lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been so shipped, unless such holder of the Bill of Lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board

"Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by shewing that it was caused without any default on his part, and wholly by the fraud of the shipper, or the holder, or some person under whom the owner claims"

Where goods are at sea the parting with the Bill of Lading which is the symbol of the goods, is parting with the ownership of the goods themselves: and this principle applies to goods which for the convenience of the parties have been landed at a sufferance wharf. (11 & 12 Vict. [1848], c. xviii., and 25 and 26 Vict. [1862], c. 63, s. 67.)

The Bill of Lading is a living instrument so long as the engagement of the shipowner has not been completely fulfilled, and the transfer of it for value passes the absolute property in the goods. And it has not been fulfilled so long as the goods, though landed at a wharf, are subject to a stop order

The person who first gets the Bill of Lading (though only one of a set of three) gets the property in the goods it represents: he need not do any act to assert his title—which the transfer of the Bill of Lading itself renders complete: and any subsequent dealings with the others are subordinate to the rights passed by that one

Myerstein v. *Barber*, L. R., 2 C. P., 38; 661. 4 H. L., 317.

12. If Bills of Exchange are sent to be accepted and a Bill of Lading along with them to protect the Bills of Exchange, if the consignee refuses acceptance of the Bills of Exchange he cannot retain the Bill of Lading

A Bill of Lading retained in such a manner conveys no property in the goods to an assignee of the Bill

Shepherd v. *Harrison*, L. R., 4 Q. B., 196; 493. 5 H. L., 116.

Factors' Acts Amendment Act, Stat. 1877, *c.* 39

10. Whereas doubts have arisen with respect to the true meaning of certain provisions of the Factors' Acts, and it is expedient to remove such doubts and otherwise to amend the said Acts, for the better security of persons buying or making advances on goods, or documents of title to goods, in the usual and ordinary course of mercantile business:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

1. In this Act, the expression "the principal Acts" means the following Acts: that is to say,

The Act of the 4th Geo. IV. (1823), c. 83

The Act of the 6th Geo. IV. (1825), c. 94

The Act of the 5th and 6th of Her Majesty (1842), c. 39

And the said Acts and this Act may be cited for all purposes as the "Factors' Acts, 1823 to 1877"

2. Where any agent or person has been entrusted with and continues in the possession of any goods, or documents of title to goods, within the meaning of the principal Acts as amended by this Act, any revocation of his entrustment or agency shall not prejudice or affect the title or rights of any other person who, without notice of such revocation, purchases such goods or documents

3. Where any goods have been sold, and the vendor or any person on his behalf continues or is in possession of the documents of title thereto, any sale, pledge, or other disposition of the goods or documents made by such vendor or any person or agent entrusted by the vendor with the goods or documents within the meaning of the principal Acts as amended by this Act so continuing or being in possession, shall be as valid and effectual as if such vendor or person were an agent or person entrusted by the vendee with the goods or documents within the meaning of the principal Acts as amended by this Act, provided the person to whom the sale, pledge or other disposition is made has not notice that the goods have been previously sold

4. Where any goods have been sold or contracted to be sold, and the vendee or any person on his behalf, obtains the possession of the documents of title thereto from the vendor or his agents, any sale, pledge, or disposition of such goods or documents by such vendee so in possession or by any other person or agent entrusted by the vendee with the documents within the meaning of the principal Act as amended by this Act shall be as valid and effectual as if such vendee or other person were an agent or person entrusted by the vendor with the documents within the meaning of the principal Act as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice of any lien or other right of the vendor in respect of the goods

5. Where any document of title to goods has been lawfully indorsed or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by indorsement (or by delivery where the document is by custom, or by its express terms transferable by delivery, or makes the goods deliverable to the bearer) to a person who takes the same *bonâ fide* and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right

of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*

6. This Act shall apply only to acts done and rights acquired after the passing of this Act

On Bills *of* Lading

11. The case of Bills of Lading is another unfortunate instance of a conflict between the Courts of Law and the mercantile community, arising from the dogma which Lord Kenyon imposed on the Judges that *choses-in-action* are not transferable by the Common Law of England, so as to allow the transferee to sue the obligor in his own name. And in this case it was an entirely erroneous application of that dogma

Ever since Bills of Lading had come before the Courts the Judges had acknowledged that a Bill of Lading, made transferable by the shipmaster, was sufficient to transfer and vest the property in the goods in the consignee, or indorsee. But by an incomprehensible distinction it was held that though the Bill of Lading vested the legal property of the goods in the indorsee, yet that it did not transfer the contract to deliver them : and therefore that the indorsee of the Bill of Lading could not sue the shipmaster in his own name, but must sue in the name of the consignor

This dogma having been incidentally asserted in several cases, was formally decided in the case of *Thompson* v. *Dominy* (14 M. & W., 403)

In this case the indorsee of a transferable Bill of Lading sued the owner of the ship in his own name

Parke, B. (afterwards Lord Wensleydale) admitted that the Bill of Lading was transferable from hand to hand ; and it passed the property in the goods mentioned in it ; but he never heard of an action being brought on it, and thought such an action quite untenable. By the law of England a *chose-in-action* is not transferable : by the custom of merchants it is transferable in one instance, that of a Bill of Exchange : but there is no authority to shew that a Bill of Lading is transferable under such a custom, so as to enable a party to bring an action upon it

It is remarkable that this decision was in flat contradiction to a case decided in the same Court only a few months previously

In *Franklin* v. *Neate* (13 M. & W., 481) a person had pawned a watch as security for a loan. He then sold the watch to another person. The transferee sued the pawnbroker for the watch on paying off the loan and charges. The pawnbroker refused to deliver the watch to any person but the original owner ; because a *chose-in-action* was not transferable

But the Court unanimously held that the transferee had acquired the legal property in the watch, and had the right to sue for it in his own name, as he had acquired the same rights as the original pawnor

It would be impossible to imagine two cases in which the decisions were in more flagrant contradiction than those of *Thompson* v. *Dominy* and *Franklin* v. *Neate*

It is perfectly evident that the transferees in both cases were exactly in the same position. By the acknowledgement of the Court, they had in each case acquired the legal property in the goods : yet in one case the Court held that he had the right to sue, and in the other that he had not. In the case in which the bailee had not consented to return the watch to any one but the original pawnor, the Court held that the transferee might sue : in the case where the bailee had expressly consented to deliver the goods to any assignee, the Court held that the indorsee had no right to sue !

In this case the Court lost sight of the fundamental distinction between a Bill of Lading and a Bill of Exchange. A Bill of Lading is a title to certain specific goods, and the indorsee of the Bill acquires the legal property in these specific goods : and who but the legal owner of the goods can have the right to sue ? The shipmaster and the pawnbroker were merely bailees of the goods. But a Bill of Exchange is not a title to any specific money : it is a mere right of action against a person to pay a sum of money ; and the Bill can transfer nothing but the right of action. A Bill of Lading is not a *chose-in-action :* it is a chose in possession. Even, therefore, if the dogma that no *choses-in-action* except Bills of Exchange were transferable by the law of England, it did not apply to the case of Bills of Lading

The dogma of the Courts being thus in hopeless conflict with the interest of the mercantile community, had to be remedied by Act of Parliament, as in the case of Promissory Notes

Bills of Lading Amendment Act, Stat. 1855, *c.* 4

12. Whereas by the custom of merchants a Bill of Lading of goods being transferable by indorsement the property in the goods may thereby pass to the indorsee, but nevertheless all rights in respect of the contract contained in the Bill of Lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property: And whereas it frequently happens that the goods in respect of which Bills of Lading purport to be signed have not been laden on board, and it is proper that such Bills of Lading in the hands of a *bonâ fide* holder for value should not be questioned by the or other person signing the same on the ground of the goods not having been laden as aforesaid: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. Every Consignee of Goods named in a Bill of Lading, and every indorsee of a Bill of Lading to whom the Property in the Goods therein mentioned shall pass, upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the Bill of Lading had been made with himself

II. Nothing herein contained shall prejudice or affect any Right of Stoppage *in transitu*, or any Right to claim freight against the original shipper or owner, or any Liability of the consignee or indorsee, by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement

III. Every Bill of Lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the Bill of Lading

shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the Holder claims

CHAPTER XX

ON THE LAW OF CREDIT, BILLS AND NOTES

Preliminary Remarks

It has already been stated in a former part of this work, that the author was selected by the Law Digest Commissioners to prepare the National Digest of the Law of Credit, Bills and Notes for the guidance of the Courts of Law, in contemplation of the fusion of Law and Equity which was afterwards effected by the Supreme Court of Judicature Act

As all the Courts were henceforth to administer both Law and Equity, it was necessary to combine both the rules of Law and Equity relating to Credit, Bills and Notes

Most of the usual treatises on Bills of Exchange are merely collections of Common Law cases relating to them, and they take very slight notice of the cases in Equity. But the number of cases in Equity is very little, if at all, less than those in Common Law. Moreover, the rules of Equity relating to Credit conflict in several important points with the rules of Common Law : and the Act provides that in all cases where the rules of Equity conflict with those of Common Law, the rules of Equity shall prevail

The author's Digest was therefore a complete exposition of the principles both of Law and Equity relating to Credit, Bills and Notes. But the commissioners discontinued the work, so that it was never published officially : but the author included several important portions of it in the third edition of this work

Since then the Bills of Exchange Act of 1882 has been passed, which is entitled " An Act to Codify the Law relating to Bills of

Exchange." It might perhaps be supposed from the title that it was a codification of the *whole* Law relating to Bills and Notes. But such an idea is an entire delusion. Omitting wholly obsolete cases which may have been reversed, and are otherwise useless, it may be estimated that there are at least 3,000 cases in Law and Equity which ought to be included in any Act which has any pretensions to be called a code of "the Law" on the subject

The Bill upon which the Act was founded contained references to exactly 106 cases: and though perhaps some of these might be considered as representative cases, yet it is a matter of certainty that it does not contain one-tenth part of the whole Law

Nor does it contain any exposition of scientific principles; and only a very few references to cases in Equity. In fact it is nothing more than a series of dogmatic rules on a very small part of the subject, and is perfectly inadequate as a practical code

It would be utterly impossible to give a complete code of the Law of Bills and Notes in this work, as it would require a treatise considerably larger than than the work itself

The line we have endeavoured to draw is this: There are certain legal doctrines and cases which are absolutely indispensable for a banker to be familiar with in his daily business, any one of which may occur in practice at any instant. There are other doctrines and cases which are only necessary to be known, when the banker is unhappily drawn into legal proceedings; in these cases he will be in the hands of, and be guided by, his solicitor and counsel

We have endeavoured to give a selection of those doctrines and cases only which are comprised under the former of these divisions

In endeavouring however to draw this line, we are sure that every one conversant with the subject must be aware of the difficulty of selecting out of the great mass of cases and decisions, those only which are fundamental, and passing over those which are only of secondary importance

In the present chapter the results of our own work on the Digest and the Bills of Exchange Act, 1882, are incorporated. Those clauses which are taken from the Act are distinguished by an asterisk

Definitions *and* General Principles

On the Origin and Nature of Credit *or* Debt

1. 1. When one person "borrows" money, or buys goods from another "on credit" an Obligation, or Contract, is created between these two persons, consisting of two parts—

(*a*) A **Right to Demand** payment is created in the person of the lender or seller

(*b*) A **Duty to pay** is created in the person of the borrower or buyer

2. The lender or seller's *Right to Demand* payment is termed a **Credit**: and the borrower's or buyer's *Duty to pay* is termed a **Debt**

3. But in law and common usage the Right to demand payment is also called a **Debt**

4. The word Debt is, therefore, used indiscriminately to mean the *Right to demand* as well as the *Duty to pay:* and it must always be observed from the context of the passage in which sense it is used

5. Hence **Credit** or **Debt** in Legal, Commercial, and Economical language, means a Right of Action against a person for a sum of money

6. Such a Right, Credit, or Debt is a *Chose-in-action*, and is included under the term Goods and Chattels

Sheppard. *A grand Abridgment of the Common and Statute Law of England.* 1675. *p.* 329. *Ford & Sheldon's Case*, 12 Co. Rep., 2. *Ryal* v. *Rowles*, 1 Ves., sen., 348. Stephen's Blackstone, Vol. I., ch. 5

7. A creation or declaration of trust of a Debt, or *Chose-in-action*, may be made by mere words, without writing, and when once made is irrevocable, except by consent of all parties

Nab v. *Nab*, 10 Mod., 404. *Fordyce* v. *Williams*, 3 Bro., C. C., 577. *Ardern* v. *Rowney*, 5 Esp., 255. *Bayley* v. *Boulcott*, 4 Russ., 345. *Benbow* v. *Townsend*, 1 My. & K., 506. *Crabb* v. *Crabb*, 1 My. & K., 511. *Kilpin* v. *Kilpin*, 1 My. & K., 520. *Boyd* v. *Emerson*, 2 A. & E., 184. *Tibbits* v. *George*, 5 A. & E., 107. *Macfadden* v. *Jenkyns*, 1 Hare, 458. *Hawkins* v. *Gardiner*, 2 Sm. & Gif., 441. *Peckham* v. *Taylor*, 31 Beav., 250

8. The person who owes the money is termed the **Debtor**: the person to whom it is owed is termed the **Creditor**, and sometimes the **Debtee**

On the **Transfer** *of a* **Credit,** *or* **Debt**

2. 1. A Credit, Debt, or *Chose-in-action* may be transferred orally by the Creditor to another person with the consent of the Debtor: a trust is then created in the person of the Debtor, and the transferee may sue him in his own name

Bracton, Lib. iii., c. 2., s. 13. *Tatlock* v. *Harris*, 3 T. R., 174. *Fairlie* v. *Denton*, 8 B. & C., 395

2. If a debtor creates an Obligation assignable or transferable to bearer, such an Obligation may be sold or transferred; whether it is in the form of a simple Contract or a Deed: and the assignee, or bearer, may sue the Debtor in his own name

Three Priests' Case, Y. B., 41 Edw. III. (1368), 27. *Baker* v. *Brook*, Dyer, 65, 1. *Maund* v. *Gregory*, 7 Co. Rep., 28b. *Gerard* v. *Bowden*, Hetl., 80. *Shelden* v. *Hentley*, 2 Show., 1601. *Hinton's Case*, 2 Show., 235. *Bromwich* v. *Lloyd*, 2 Lutw., 1583. *Williams* v. *Williams*, Carth., 269. *Pearson* v. *Garrett*, Comb., 227. *Lambert* v. *Oakes*, 1 Ld. Raym., 443. *Carter* v. *Palmer*, 12 Mod., 380. *Miller* v. *Race*, 1 Burr., 452. *Grant* v. *Vaughan*, 3 Burr., 1516. *Keene* v. *Beard*, 8 C. B., N. S., 372. *Fenner* v. *Meares*, 2 W. Bl., 1269. *Goodwin* v. *Robarts*, L. R., 10 Ex., 357

"Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any Debt, or other legal *Chose-in-action*, of which express notice in writing shall have been given to the Debtor, Trustee, or other person from whom the assignor would have been entitled to receive or claim such Debt, or *Chose-in-action*, shall be, and be deemed to be effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such Debt, or *Chose-in-action*, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor

"Provided always that if the Debtor, Trustee, or other person liable in respect of such Debt, or *Chose-in-action*, shall have had notice that such assignment is disputed by the assignor, or any one claiming under him; or of any other opposing or conflicting claims to such Debt, or *Chose-in-action*, he shall be entitled if he think fit, to call upon the several persons making claim thereto, to interplead concerning the same; or he may if he think fit pay

the same into the High Court of Justice, under and in conformity with the provisions of the Acts for the relief of trustees"

36 & 37 Vict. (1873), ch. 66, s. 25, § 6

Generally in all matters in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the rules of Equity shall prevail

36 & 37 Vict. (1873), ch. 66, s. 25, § 11

Definition of Instruments of Credit or Debt

3. 1. Any written record of a fact is termed an **Instrument.** Any written evidence of a Debt is termed an **Instrument** of **Credit** or of **Debt**

2. A written contract by which one person is bound to pay (1) a certain sum of money; (2) to a certain person; (3) at a certain time; is termed an **Obligation,** or **Security for Money,** or a **Valuable Security**

24 & 25 Vict. (1861), c. 96, s. 1

3. A written **Order** from one person to another who *owes,* or appears to owe, him money as a **Debtor,** directing him to pay absolutely and at all events (1) a certain sum of money; (2) to a certain person; (3) at a certain time; is, in modern language termed a **Bill** of **Exchange,** or, shortly, a **Bill**

4. A written **Promise** made by one person to pay absolutely and at all events (1) a certain sum of money; (2) to a certain person; (3) at a certain time; is in modern language termed a **Promissory Note,** or, shortly, a **Note**

5. A written **Order** addressed by one person to another, who *holds* a fund not as his own property, but merely as the **Agent, Bailee, Trustee,** or **Servant** of the writer, to pay a sum of money, is termed a **Draft,** or **Order** for the payment of money

Row v. *Dawson,* 1 Ves., sen., 331

6. A mere acknowledgment of a debt, not containing any promise to pay, is usually termed an I O U

7. A Bill, Note, or I O U is always a *chose-in-action,* that is, it operates as a charge, or Credit, against the person of the Debtor

8. A Draft, or Order, is always a *chose-in-possession,* and it operates as a charge, or Credit, against the fund

Row v. *Dawson,* 1 Ves., sen., 331

Definition of Parties to an Instrument of Credit

4. 1. In a Bill the person who addresses the order is termed the **Drawer:** the person to whom he addresses it is termed the **Drawee**

2. If the Drawee consents to pay the order he must subscribe his name to it, usually with the word "accepted" before it; he is then termed the **Acceptor**

3. In a Note the person who makes the promise is termed the **Maker**

4. The person to whom a Bill, Note, or Draft is made payable is termed the **Payee**

5. The Acceptor of a Bill and the Maker of a Note is termed the **Principal Debtor** or **Obligor**

6. Before the 36 & 37 Vict. (1873), c. 66, came into effect, unless the Obligor of a Bill or Note expressly made it payable to the payee, or order, the instrument could not be transferred so as to enable the transferee to sue the obligor at law in his own name: and such an instrument was termed non-Negotiable

Since that Act came into effect on Nov. 1, 1875, this is no longer the case, and any instrument of Credit or Debt may now be transferred so that the transferee may sue the Obligor in his own name

7. If, however, the instrument is made payable to the payee "or order," it cannot be transferred without the payee's order; this the payee does by writing his name on it, usually on the back of it; hence, this signature is termed the **Indorsement.** The payee is then termed the **Indorser,** and the person to whom he delivers it is termed the **Indorsee**

8. The person who has the lawful possession of the instrument, either actual or constructive, and is entitled to sue the parties to it, is termed the **Holder**

Definition of Terms relating to the Instrument

5. 1. To "**Draw,**" "**Make,**" "**Accept**" (*a*) or "**Indorse**" (*b*) a Bill, Note, or Draft, means besides writing the instrument, or the name on it, as the case may be, to deliver it to some person, or his agent, as his property

(*a*) *Cox* v. *Troy*, 5 B. & Ald., 474

(*b*) *Rex* v. *Lambton*, 5 Price, 428. *Brind* v. *Hampshire*, 1 M. & W., 365. *Adams* v. *Jones*, 12 A. & E., 455. *Marston* v. *Allen*, 8 M. & W., 494. *Green* v. *Steer*, 1 Q. B., 707. *Bell* v. *Lord Ingestre*, 12 Q. B., 317. *Lloyd* v. *Howard*, 15 Q. B., 995. *Barber* v. *Richards*, 6 Exch., 63

2. To "**Issue**" a Bill, Note, or Draft, is to deliver it to some one who thereby acquires a right of action on it

3. To "**Present**" a Bill for "**Acceptance**" or "**Sight**" (*a*) is to bring it to the Drawee, and to request him to undertake to pay it

(*a*) *Campbell* v. *French*, 6 T. R., 200

4. To "**Present**" a Bill or Note for "**Payment**" is to bring it to the Principal Debtor and demand payment of it

5. To "**Collect**" a Bill or Note, or Draft, is to present it for payment as agent for the holder

6. To "**Retire**" a Bill or Note is for one of the parties to it to buy it up and so withdraw it from circulation

Elsam v. *Denny*, 15 C. B., 87

7. To "**Discount**" a Bill or Note is to buy from the holder of it the right to receive the money due upon it

8. To "**Domicile**" a Bill or Note is to state in it the place where it is payable

Lowndes v. *Anderson*, 13 East., 130. *Robarts* v. *Tucker*, 16 Q. B., 579

9. To "**Utter**" a Bill or Note is for a person either himself, or by his agent, to use it in any way whatever to obtain Money or Credit by means of it

Rex v. *Shukard*, R. & R., 200. *Reg.* v. *Radford*, 1 Den., C. C., 59. *Reg* v. *Ion*, 2 Den., C. C., 475

10. "**Days of Grace**" are days which mercantile usage and law allow the obligor on certain Notes and Bills to pay them in, beyond the day limited in the instrument itself

11. If a person merely writes a Bill or Note, or signs his name on one, and then retains it in his own possession, he does not *draw*, *make*, *accept*, or *indorse*, the instrument as the case may be.

12. But if he then *delivers* the instrument to another person without any consideration, and for his accommodation only, so that the transferee acquires a property in it, the writer draws,

makes, accepts or indorses the instrument as the case may be, but he does not *issue* it

13. A Bill, Note, or Draft is not *issued* until it is delivered to some person, who is entitled to sue all the parties to it

Downes v. *Richardson*, 5 B. & Ald., 674. *Bignold, ex parte*, 2 Mont. & Ayr., 633. *Tarleton* v. *Shingler*, 7 C. B., 812. *Swan* v. *Bank of Scotland*, 2 Mont. & Ayr., 656

14. If one person makes himself a party to a Bill or Note, either by drawing, making, accepting, or indorsing it, for the use benefit, or advantage of another person, without receiving any consideration for so doing or being indebted to such person, such an instrument is termed an **Accommodation Bill**, or **Note**, and the person who so makes himself a party to it is termed the *accommodation drawer, maker, acceptor, or indorser*, as the case may be

The person for whose use, benefit, or advantage he has so made himself a party to such an instrument, has no right of action against him upon it

6. No consideration, nor even the words "value received" need be expressed in a Bill, Note, or Draft

White v. *Ledwick*, 4 Doug., 247. *Macleod* v. *Snee*, 2 Ld., Raym., 1481. *Josceline* v. *Lasserre*, Fort., 281

7.* Bills, Notes, and Drafts usually have the sum for which they are payable written at full length in the body of the instrument, and also in figures in the margin. If the two sums differ, the instrument is good for the sum stated in the body of it: the sum stated in the margin in figures is a mere memorandum

8. Bills and Notes must be drawn payable absolutely and at all events in money only, at some certain event, such as *demand, sight*, or some *date*, or some event which must *certainly* happen; or at a certain time after demand, sight, or date, or such certain event

9. An instrument bearing no date or time of payment, is held to be dated at the time it is made, and is payable on demand

De la Courtier v. *Bellamy*, 2 Show., 422. *Hague* v. *French*, 3 B. & P., 173. *Giles* v. *Bourne*, 6 M. & S., 73. *Whitlock* v. *Underwood*, 2 B. & C., 157

10. The signature of any party to a Bill or Note may be by a mark or stamp

George v. *Surrey*, 1 M. & M., 516

On the Stamp

11. 1. All Bills and Notes must be stamped with an *impressed* stamp previous to their execution

33 & 34 Vict. (1870), c. 97, s. 53, § 2

2. "The fixed duty of one penny on a bill of exchange for the payment of money on demand may be denoted by an *adhesive* stamp, which is to be cancelled by the person to whom the bill is signed, before he delivers it out of his hands, custody, or power"

33 & 34 Vict. (1870), c. 97, s. 50

3. "Where a Bill of Exchange or Promissory Note has been written on material bearing an impressed stamp of sufficient amount, but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings, if the bill or note be not then payable according to its tenor, and of ten pounds if the same be so payable

33 & 34 Vict. (1870), c. 97, s. 53, § 1

4. "Every person who issues, indorses, transfers, negotiates, presents for payment or pays any bill of exchange or promissory note liable to duty and not being duly stamped, shall forfeit the sum of ten pounds: and the person who takes or receives from any other person any such Bill or Note not being duly stamped, either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever"

12. 1. An instrument not "lawfully" stamped is absolutely void, and no action can be brought on it by any person cognisant of its illegality

2. An instrument not "duly" stamped subjects the issuer of it to penalties, but it may be received in evidence, and an action may be brought on it

55 Geo. 3 (1815), c. 184, s. 10

13. An instrument not "lawfully" stamped is a bill or note written upon unstamped or insufficiently stamped paper (*a*); or upon paper stamped with a superseded die (*b*); or a post dated cheque payable to bearer on demand (*c*). Such instruments are absolutely void, and cannot be received as evidence in any action brought upon them by any person who takes them with knowledge of the facts

(*a*) 31 Geo. 3 (1791), c. 28, s. 19. *Green* v. *Davis*, 4 B. & C., 235.
(*b*) 3 & 4 Will. 4 (1833), c. 97, s. 16. *Dawson* v. *Macdonald*, 2 M. & W., 26
(*c*) *Allen* v. *Keeves*, 1 East., 435. *Ardern* v. *Rowney*, 5 Esp., 255. *Serle* v. *Norton*, 9 M. & W., 309. *Borrodaile* v. *Middleton*, 2 Camp., 53. *Swan* v. *Blair*, 3 Cl. & Fin., 610. *Oliver* v. *Mortimer*, 2 F. & F., 127

14. An instrument not "duly" stamped is one upon which there is a stamp of an improper denomination or rate of duty, but of equal or greater value in the whole with or than the stamp or stamps which ought regularly to have been used thereon (*a*)

Thus Bills and Notes drawn upon wrong stamps of equal value with the proper one (*b*): or a post dated cheque payable to order on demand stamped with a 1d. stamp (*c*) are instruments not duly stamped, but they are nevertheless valid and receivable in evidence

(*a*) 31 Geo. 3 (1815), c. 184. s. 10
(*b*) 55 Geo. 3 (1815) c. 184, s. 12. *Upstone* v. *Marchant*, 2 B. & C., 10. *Williams* v. *Jarrett*, 5 B. & Ad., 32
(*c*) *Key* v. *Mathias*, 3 F. & F., 279. *Whistler* v. *Forster*, 14 C. B., N. S., 248

15. If an instrument appears to be properly dated and stamped on the face of it, though really invalid from having a wrong place and date on it, and therefore void as between the parties cognisant of the illegality, yet if it be taken by a holder for value, who is ignorant of the facts, he may recover on it

Wright v. *Riley*, Peake, 230. *Martin* v. *Morgan*, 3 B. & Mer., 635. *Williams* v. *Jarrett*, 5 B. & Ad., 32. *Whistler* v. *Forster*, 14 C. B., N. S., 248. *Austin* v. *Bunyard*, 6. B. & S., 687. *Begbie* v. *Levi*, 1 C. & J., 180

16. 1. An instrument which is void under the stamp laws is no payment even though the receiver take it without objection (*a*)

2. The receiver of such an instrument cannot be charged with *laches* for not presenting it in due time for payment (*b*); nor for not giving notice of dishonour (*c*); nor even can it be used to prove a debt in bankruptcy (*d*)

3. Neither will equity relieve on the instrument (*e*); but if a person bound to give a stamped instrument gives one void under the stamp laws, equity will make him a good one (*f*)

4. Taking an instrument void under the stamp laws does not avoid the consideration (*g*)

(*a*) *Ruff* v. *Webb*, 1 Esp., 128. *Wilson* v. *Vysar*, 4 Taunt., 288. *Bond* v. *Warden*, 1 Coll., C. C., 583

(*b*) *Wilson* v. *Vysar*, 4 Taunt., 288

(*c*) *Cundy* v. *Marriott*, 1 B. & Ad., 696

(*d*) *Manner, ex parte*, 1 Rose, 68

(*e*) *Price* v. *Toulmin*, 5 Ves., 235

(*f*) *Aylett* v. *Bennett*, 1 Anst., 45

(*g*) *Ruff* v. *Webb*, 1 Esp., 129. *Wilson* v. *Kennedy*, 1 Esp., 245. *Brown* v. *Watts*, 1 Taunt, 353. *Tyte* v. *Jones*, 1 East., 58n. *Aloes* v. *Hodgson*, 7 T. R., 241

17. All instruments not allowed to be re-issued are upon payment to be cancelled and annulled by the person paying them; and if any one re-issue or negotiate them, or if the person paying them neglect to cancel them, he is to forfeit £50. The person issuing them is also liable for the duty, and any person taking them in payment is to forfeit £20

55 Geo. 3 (1815), c. 184, s. 19

18. 1. Bills and Notes made payable after date may be issued any number of times even by the principal debtor until the time when they become payable

2. But if they be paid at maturity by or on behalf of the principal debtor, they are finally extinguished, and cannot be re-issued

3. If, however, they be not paid by or on behalf of the principal debtor, they may be re-issued under certain conditions

19. 1. A Bill or Note may be negotiated for the space of six years after it has become payable

2. The Statute of Limitations prevents any action being taken after that period, either on the instrument or on the consideration (*a*); without a fresh promise in writing signed by the party to be

charged (*b*); or his agent (*c*); or by part payment of principal or interest

3. Such written promise or payment will revive the remedy for six years from its date

(*a*) 21 Jac. 1 (1623), c. 16, s. 3
(*b*) 9 Geo., 5 (1828), c. 14, s. 1
(*c*) 19 & 20 Vict. (1856), c. 97, s. 13

20. 1. Days of Grace are not allowed on any instruments payable on or after demand : or at sight or presentation (*a*)

2. Instruments payable on demand are due and payable immediately: no demand is necessary before action brought: and the Statute of Limitations begins to run from their date (*b*)

(*a*) 34 & 35 Vict. (1871), c. 74, s. 2
(*b*) *Capp* v. *Lancaster*, Cro. Eliz., 548. *Collins* v. *Benning*, 12 Moo., 444. *Rumball* v. *Ball* 10 Moo., 38. *Megginson* v. *Harper*, 2 C. & M., 322. *Norton* v. *Ellam*, 2 M. & W., 461

21. 1. Three days of grace are allowed on instruments payable after sight (*a*) ; at or after a fixed date, or a certain event

2. Such instruments are payable on, and not before (*b*), the last day of grace : no action can be brought, nor does the Statute of Limitations begin to run until the last day of grace has expired (*c*)

3. If the instrument is payable by instalments, days of grace are allowed on each instalment (*d*)

4. If the last day of grace be Sunday, Christmas Day, Good Friday, or a public fast or thanksgiving, the instrument is payable the day before (*e*)

5. By statute 34 Vict. (1871), c. 17, the following days are declared to be Bank Holidays—

In England and Ireland—Easter Monday ; the Monday in Whitsun week ; the first Monday in August ; the Twenty-sixth day of December, if a week day

In Scotland—New Year's Day ; Christmas Day ; (if either of these days falls on a Sunday, the next Monday shall be a Bank Holiday:) Good Friday ; the first Monday of May ; the first Monday of August

All Bills and Notes due and payable on these days shall be payable on the following day : and in case of non-payment may

be noted and protested on the day next following on which they may be lawfully protested

If the day on which any notice of dishonour of an unpaid bill or note should be given ; or any bill presented or received for acceptance, or accepted or forwarded to any referee or referees, is a bank holiday, such notice of dishonour shall be given, and such bill or note shall be presented or forwarded on the day next after such bank holiday

(*a*) *Coleman* v. *Sayer*, Stra., 829. *Bellasis* v. *Hester* 1 Ld. Raym., 280

(*b*) *Wiffen* v. *Roberts*, 1 Esp., 261

(*c*) *Wittersheim* v. *Lady Carlisle*, 1 H. Bla., 631

(*d*) *Orridge* v. *Sherborne*, 11 M. & W., 374

(*e*) 7 & 8 Geo. 4 (1827), c. 15, s. 3

22. If any Bill, Note, Obligation, or Valuable Security made or become payable to bearer, be taken in exchange for any goods, merchandise, money, or other Bill, Note, Obligation, or Valuable Security, without the indorsement of the transferor, it is an unconditional sale of the security, and the transferee has no right of action against the transferor if it be not paid, either on the instrument or on the consideration

Bank of England v. *Newman*, 1 Ld. Raym., 442. *Ward* v. *Evans*, 2 Ld. Raym., 298. *Fenn* v. *Harrison*, 3 T. R., 787. *Ex parte Shuttleworth*, 2 Ves., jun., 368. *Fydell* v. *Clarke*, 1 Esp., 447. *Emlye* v. *Lye*, 15 East., 7. *Camidge* v. *Allenby*, 6 B. & C., 373. *Guardians of Lichfield Union* v. *Green*, 1 H. & N., 884.

23. 1. The transferor of a Bill or Note by mere delivery warrants the *genuineness* of the instrument, *i.e.*, that it is not forged or fictitious ; he does not warrant the *solvency* of the parties to it

2. But if he knew that the parties to it had failed, or if it be forged or fictitious, he is liable to refund payment to the transferee

Jones v. *Ryde*, 5 Taunt., 488. *Bruce* v. *Bruce*, 1 Marsh, 165. *Gurney* v. *Womersley*, 4 E. & B., 133. *Gompertz* v. *Bartlett*, 2 E. & B., 849. *Fuller* v. *Smith*, 1 C. & P., 197

24. A Bill, Note, *Chose-in-action*, Obligation, or Valuable Security is included under the words "goods and chattels" or "effects," in an Act of Parliament (*a*) ; or under an extent (*b*) ;

or a writ of *fieri facias* (*c*); in a will, unless there be words to negative such an inference (*d*); and in the clause of "reputed ownership" in bankruptcy (*e*)

(*a*) *Slade* v. *Morley*. 4 Co. Rep., 92b. *Ford's Case*, 12 Co. Rep, 1. *Clayton's Case*, Lytt., 86. *Ryal* v. *Rowles*, 1 Ves., sen., 348

(*b*) *Byles on Bills*, 3

(*c*) 1 & 2 Vict. (1838), c. 110, s. 12

(*d*) *Anon.*, 1 P. Wms., 267. *Campbell* v. *Prescott*, 15 Ves., 500. *Kendall* v. *Kendall*, 4 Russ., C. C., 360. *Parker* v. *Marchant*, 1 Y. & Coll., C. C., 290

(*e*) *Ryal* v. *Rowles* 1 Ves., sen., 348. *Ex parte Colvill*, Mont., C. B., 110. *Bozon* v. *Bolland*, M. & Bl., 74. *Hornblower v. Proud*, 2 B. & Ald., 327. *Ex parte Burton*, 1 Gl. & J., 207. *Belcher* v. *Campbell*, 8 Q. B., 1. *Ex parte Richardson*, Buck, 483. *Bartlett* v. *Bartlett*, 1 De G. & J., 127. *Edwards* v. *Cooper*, 11 Q. B., 33. *Bullock* v. *Dodds*, 2 B. & Ald., 258. *Cumming* v. *Bailey*, 6 Bing., 366. *Harman* v. *Fisher*, 1 Cowp., 117

25. The property in an instrument remains in the owner until he has *entirely* parted with it: if he cuts it in two and sends one part by post, he does not lose the property in it till he has sent the other part, and he may reclaim the first part sent

Smith v. *Munday*, 3 E. & B., 22

26. 1. Instruments payable by a banker must, in general, be presented for payment during banking hours, otherwise such presentment is void (*a*)

2. But if the banker has a clerk stationed to give answers after hours, and the same answer is given as would have been given during hours, such presentment is sufficient (*b*)

3. Instruments payable by other persons may be presented for payment at any reasonable hour (*c*): between 8 and 9 p.m. is the latest hour yet decided to be reasonable (*d*)

(*a*) *Parker* v. *Gordon*,, Esp., 41; 7 East., 385. *Elford* v. *Teed*, 1 M. & S., 28. *Whitaker* v. *Bank of England*, 1 C. M. & R., 744

(*b*) *Garnet* v. *Woodcock*, 6 M. & S., 44. *Henry* v. *Lee*, 2 Chit., 124. *Crook* v. *Jadis*, 6 C. & P., 191

(*c*) *Barclay* v. *Bailey*, 2 Camp., 527. *Morgan* v. *Davidson*, 1 Stark., 114. *Wilkins* v. *Jadis*, 1 Mo. & R., 47; 2 B. & Ad., 188

(*d*) *Triggs* v. *Newnham*, 1 C. & P., 631; 10 Moo., 249

27. A Bill, Note, or Valuable Security may be the subject of *donatio mortis causâ*

Bank Notes. *Drury* v. *Smith*, P. Wms., 404. *Ashton* v. *Dawson*, 2 Coll., C. C., 363n. *Clavering* v. *Yorke*, 2 Coll. C. C., 363n. *Miller* v. *Miller*, 3 P. Wms., 356. *Hill* v. *Chapman*, 1 Bro., C. C., 612

Bills of Exchange. *Rankin* v. *Weguelin*, 27 Beav., 309

Promissory Notes payable to donor's order unindorsed. *Veal* v. *Veal*, 27 Beav., 19

Cheques.* *Lawson* v. *Lawson*, 1 P. Wms., 440. *Snellgrave* v. *Bayly*, Ridg., ca. t. Hard., 202. *Ward* v. *Turner*, 2 Ves., sen., 431. *Tate* v. *Hilbert*, 2 Ves., jun., 111. *Bouts* v. *Ellis*, 17 Beav., 121

Bank Deposit Receipt. *Witt* v. *Amiss*, 1 B. & S., 109. *Amiss* v. *Witt*, 33 Beav., 19

28. 1. If any Bill, Note, or Security for money be lost or destroyed, the right owner may sue any party to it, upon giving him an indemnity to the satisfaction of a court, judge, or master, against the claims of any other person upon it (*a*)

2. And such a security may be proved in bankruptcy (*b*)

3. If half of an instrument be lost or destroyed, the owner of the other half may enforce payment of it with or without an indemnity (*c*)

(*a*) 17 & 18 Vict. (1854), c. 125, s. 87

(*b*) *Ex parte Greenway*, 6 Ves., 812

(*c*) *Mossop* v. *Eadon*, 16 Ves., 430. *Redmayne* v. *Burton*, 2 L. T., N. S., 324

29. 1. If any Valuable Security be lost in its transmission through the post, or by any conveyance which the person who should receive it directs, the loss falls upon him (*a*)

2. No action lies against the Postmaster-General for the loss of any instrument during its transmission through the post (*b*)

* In several text books of authority it is laid down absolutely that a cheque cannot be the subject of a gift *mortis causâ* (*Roper on Legacies* vol. i., p. 11; *Williams on Executors*, vol. i., p. 723; *Byles on Bills*, 9th Edit., p. 170; *White and Tudor's* lead. ca. in Eq., vol i., p. 743), and in the case of *Hewitt* v. *Kaye* (L. R., 6 Eq., 189), Lord Romilly, M. R., laid it down as an absolute doctrine that a cheque is incapable of being made a gift *mortis causâ*. But having been obliged to investigate the question in my Digest of the Law of Bills of Exchange, as prepared for the Digest of Law Commissioners, I was satisfied that the doctrine stated by the writers, and the decision of Lord Romilly, above mentioned, is erroneous; and I accordingly excluded the case of *Hewitt* v. *Kaye* from my Digest. My reasons for so doing are given at full length in that Digest; but are, of course, far too long to be inserted here. I merely state this that I may not be supposed to have overlooked the case of *Hewitt* v. *Kaye*

3. But any person in the employment of the post office is liable for any act of negligence or misconduct of his own (*c*)

(*a*) *Warwick* v. *Noakes*, Peake, 98. *Hawkins* v. *Rutt*, Peake, 241

(*b*) *Lane* v. *Cotton*, 1 Ld. Raym., 646. *Whitfield* v. *Lord Despencer*, Cowp., 754

(*c*) *Lane* v. *Cotton*, 1 Ld. Raym, 646. *Whitfield* v. *Lord Despencer*, Cowp., 745. *Rowning* v. *Goodchild*, 2 W. Bla., 906. *Hordern* v. *Dalton*, 1 C. & P., 181

Of an I O U

30. A mere acknowledgment of a debt not containing any promise to pay is usually termed an I O U, and is often in the following form—

London, May 4, 1876

I O U £100

To Mr. A. B. C. D.

31. Such an acknowledgment, or an acknowledgment or receipt for money lent or deposited to be accounted for, does not require a stamp

Fisher v. *Leslie*, 1 Esp., 425. *Israel* v. *Israel*, 1 Camp., 449. *Childers* v. *Boulnois*, D. & R. N. P. Ca., 8. *Tomkins* v. *Ashby*, 6 B. & C., 541. *Beeching* v. *Westbrook*, 8 M. & W., 412. *Melanotte* v. *Teasdale*, 13 M. & W., 216. *Gould* v. *Coombs*, 1 C. B., 543

32. Nor does such a document require a stamp if it contains a promise to pay only interest on the sum due, and not the principal (*a*)

But if it promises to pay the principal it must be stamped as a Note (*b*)

(*a*) *Melanotte* v. *Teasdale*, 13 M. & W., 216. *Smith* v. *Smith*, 1 F. & F., 539

(*b*) *Brooks* v. *Elkins*, 2 M. & W., 74. *Waitham* v. *Elsee*, 1 C. & K., 35

33. An I O U not having the name of any creditor on it is *primâ facie* evidence in favour of the party who produces it

Fisher v. *Leslie*, 1 Esp., 427. *Curtis* v. *Rickards*, 1 M. & Gr., 46. *Douglas* v. *Holme*, 12 A. & E., 641. *Fesenmayor* v. *Adcock*, 16 M. & W., 449

34. An acknowledgment of debt may be given as a *donatio mortis causâ*

Moore v. *Darton*, 4 De G. & Sm., 517

35. A bill in equity lies to discover whether an I O U was given for a gaming debt (*a*) : and equity will restrain an action on an I O U given for an illegal consideration (*b*)

(*a*) *Wilkinson* v. *L'Eaugier*, 2 Y. & Coll., C. C., 366
(*b*) *Quarrier* v. *Colston*, 12 L. J., Ch., 57

Rules relating to the **Transfer** *of* **Choses-in-action**

1.—*Assignment of a Chose-in-action by Creditor to Transferee*

36. 1. An assignment of a *chose-in-action* in equity is equivalent to the delivery of the chattel in Law

2. As soon as the assignment of the *chose-in-action* is completed, so that nothing more remains to be done by the assignor, the property in the *chose-in-action* is transferred to the assignee

3. The assignee has a good and effectual title against the assignor and all persons who claim by, through, or against him, such as his executors, administrators, assignees in bankruptcy, judgment creditors, or an extent at the suit of the Crown

4. But the title of the assignee is not final and complete against all the world until the debtor has received notice of the assignment

5. Until this notice has been given the *chose-in-action* is still in the "order and disposition" of the assignor, and in the event of his bankruptcy or death passes to his assignees or representatives

6. Immediately the debtor receives the notice, he is fixed with the trust, and is converted into a trustee for the assignee : if he makes any payment to the assignor it is no discharge to him, and and he is still liable to the assignee

7. If he has good reason to dispute the assignment, he may pay the assignor until the point is settled in equity (*a*)

Ex parte Byas, 1 Atk., 124. *Row* v. *Dawson*, 1 Ves., sen., 332. *Ryal* v. *Rowles*, 1 Ves., sen., 348. *Tate* v. *Hilbert*, 2 Ves., jun., 111. *Jones* v. *Gibbons*, 9 Ves., 410. *Casberd* v. *Att. Gen.*, 6 Price, 411. *Ex parte Monro*, 1 Buck, 300. *Ex parte Burton*, 1 Gl. & J., 207. *Ex parte Usborne*, 1 Gl. & J., 358. *Williams* v. *Thorpe*, 2 Sim., 257. *Ex parte Colvill*, Mont., C. B., 110. *Ex parte Tennyson*, M. & Bl.,

C. B., 67. *Crowfoot* v. *Gurney*, 9 Bing., 372. *Buck* v. *Lee*, 1 A. & E., 804. *Burn* v. *Carvalho*, 4 My. & Cr., 690. *Macfadden* v. *Jenkyns*, 1 Ph., 153. *Bell* v. *London & N. W. Ry. Co.*, 15 Beav., 552. *Donaldson* v. *Donaldson*, Kay, 711. *Gibson* v, *Overbury*, 7 M. & W., 555. *Lowe's Settlement, re*, 30 Beav., 95. *Jeffs* v. *Day*, L. R., 1 Q. B., 372. *Hewitt* v. *Kaye*, L. R., 6 Eq., 198. *Bromley* v. *Brunton*, L. R., 6 Eq., 275

(*a*) *Aplin* v. *Coates*, 30 L. J., Ch., 6. 36 & 37 Vict. (1873), c. 66, s. 25, § 6

37. If several assignees have a right to the fund, the assignee who first gives notice to the holder of the fund acquires the first charge over it, and the other assignees according to the order of their assignments

Dearle v. *Hall*, 3 Russ., 1. *Leveridge* v. *Cooper*, 3 Russ., 31. *Hulton* v. *Sandys*, 1 Young, 602. *Grecning* v. *Beckford*, 5 Sim., 195. *Foster* v. *Blackstone*, 1 My. & K., 297. *Foster* v. *Cockerell*, 3 Cl. & Fin., 456. *Atkinson, in re*, 2 De G. M. & G., 140. *Buck* v. *Lee*, 1 A. & E., 804. *Etty* v. *Bridges*, 2 Y. & C., Ex. Eq., 486. *Belcher* v. *Campbell*, 8 Q. B., 1. *Marten* v. *Sedgwick*, 9 Beav., 333. *Swayne* v. *Swayne*, 11 Beav., 463. *Elder* v. *Maclean*, 5 W. R., 447. *Pennell* v. *Deffell*, 4 De G. M. & G., 372. *Clayton's Case*, 1 Mer., 572. *Bodenham* v. *Purchas*, 2 B. & Ald., 39

38. For the purpose of notice no particular form of words is necessary. Any words are sufficient which shew an intention of transferring or appropriating the *chose-in-action* to or for the use of the assignee

Row v. *Dawson*, 1 Ves., sen., 332. *Yeates* v. *Grove*, 1 Ves., jun., 281. *Howell* v. *Maciver*, 4 T. R., 690. *Smith* v. *Everett*, 4 Bro. C. C., 63. *Heath* v. *Hall*, 4 Taunt., 326. *Ex parte Alderson*, 1 Mad., 53. *Crowfoot* v. *Gurney*, 2 Mo. & Sc., 473. *Smith* v. *Smith*, 3 & M., 231. *Ex parte Carlis*, 4 D. & Ch., 357. *Ex parte South*, 3 Swans., 393. *Tibbits* v. *George*, 5 A. & E., 107. *Hutchinson* v. *Heyworth*, 9 A. & E., 375. *Macfadden* v. *Jenkyns*, 1 Hare, 458. *L'Estrange* v. *L'Estrange*, 13 Beav., 281. *Riccard* v. *Pritchard*, 1 K. & J., 277. *Rawbone's Bequest, re*, 3 K. & J., 300. *Jones* v. *Farrell*, 3 Jur., N. S., 751

39. But the notice given must be *legal*. An instrument not "lawfully" stamped is void and of no effect; if notice be given by such an instrument the holder of the fund must not regard it: if he pays on such an instrument the payment is void, even though he agreed to do so

But if the notice be given by an instrument not "duly" stamped, the notice is valid

Firbank v. *Bell*, 1 B. & Ald., 36. *Emly* v. *Collins*, 6 M. & S., 144. *Rippiner* v. *Wright*, 2 B. & Ald., 478. *Butts* v. *Swan*, 2 Bro. & B., 78. *Collyer* v. *Fallon*, Turn. & R., 459. *Lord Braybrooke* v. *Meredith*, 13 Sim., 271. *Parsons* v. *Middleton*, 6 Hare, 261. *Macgowan* v. *Smith*, 26 L. J. Ch., 8. *Pott* v. *Lomas*, 6 H. & N., 529

40. 1. Notice given to a person who has not yet received the fund is null, void, and of no effect

2. If, therefore, several assignments of the fund have been made, and notices given to a person before he has received it, they are null and void, and the priorities take effect according to the order of the assignments (*a*)

3. But if the person who expects to receive the fund promises the assignee that he will hold it when received for him, he is bound by that promise (*b*)

(*a*) *Rodick* v. *Gandell*, 1 De G. M. & G., 763. *Buller* v. *Plunkett*, 1 Johns. & H., 441. *Webster* v. *Webster*, 31 Beav., 393. *Somerset* v. *Cox*, 33 Beav., 634. *Earl of Suffolk* v. *Cox*, 36 L. J., Ch., 591

(*b*) *Clark* v. *Adair*, cited 4 T. R., 343. *Stephens* v. *Hill*, 3 Esp., 247. *Kilsby* v. *Williams*, 5 B. & Ald., 815

41. The Purchaser of a *chose-in-action* takes it subject to any prior trusts, equities, claims, or possibilities of such, at the time of the assignment

Coles v. *Jones*, 2 Vern., 692. *Turton* v. *Benson*, 1 P. Wms., 496. *Davis* v. *Austin*, 1 Ves., jun., 247. *Matthews* v. *Wallwyn*, 4 Ves., 118. *Hill* v. *Caillovel*, 1 Ves., sen., 123. *Daubery* v. *Cockburn*, 1 Mer., 626. *Hamil* v. *Stokes*, 4 Price, 161. *Priddy* v. *Rose*, 3 Mer., 86. *Morris* v. *Livie*, 1 Y. & Col., C. C., 380. *Ord* v. *White*, 3 Beav., 357. *Moore* v. *Jervis*, 2 Coll., 60. *Smith* v. *Parkes*, 16 Beav., 115. *Cockell* v. *Taylor*, 15 Beav., 103. *Cavendish* v. *Greaves*, 24 Beav., 163. *Manningford* v. *Toleman*, 1 Col., C. C., 235

2.—*Order given by a Creditor to a Debtor to pay a third person*

42. If a creditor gives an authority or order to his debtor to pay a third person, then—

1. If the debtor pays the money to the third person in pursuance of such authority, the payment is good (*a*)

2. If the debtor assents to make such payment and communicates such assent to the third person, a trust is created, irrevocable, except by the consent of all parties, and the third person has an action against the debtor for the money (*b*)

3. An agreement to pay funds which will only be received at a future time is equally binding as one to pay funds in actual possession (*c*)

4. If the third person becomes informed that the debtor has been directed to pay him a sum of money, he may sue him for it (*d*)

5. Until the debtor has actually paid the money or entered into a binding agreement to do so in pursuance of the authority, the creditor may countermand the direction and demand repayment of the money (*e*)

(*a*) *Gibson* v. *Minet*, 2 Bing., 7. *Brind* v. *Hampshire*, 1 M. & W., 365

(*b*) *Williams* v. *Everett*, 14 East., 582. *Hodgson* v. *Anderson*, 3 B. & C., 842. *Humphreys* v. *Briant*, 4 C. & P., 157. *Lilly* v. *Hays*, 5 A. & E., 548. *Hutchinson* v. *Heyworth*, 9 A. & E., 375. *Walker* v. *Rostron*, 9 M. & W., 411. *Hamilton* v. *Spottiswoode*, 4 Ex., 200. *Farley* v. *Turner*, 26 L. J., Ch., 710. *Noble* v. *National Discount Co.*, 5 H. & N., 225. *Griffin* v. *Weatherby*, L. R., 3 Q. B., 753

(*c*) *Walker* v. *Rostron*, 9 M. & W., 411. *Hamilton* v. *Spottiswoode*, 18 L. J., Ch., 392. *Griffin* v. *Weatherby*, L. R., 3 Q. B., 753

(*d*) *Burn* v. *Carvalho*, 4 My. & Cr., 690. 36 & 37 Vict., (1873), c. 66, s. 25 § 11

(*e*) *Whitfield* v. *Savage*, 2 B. & P., 277. *Gibson* v. *Minet*, 2 Bing., 7. *Brind* v. *Hampshire*, 1 M. & W., 365. *Malcolm* v. *Scott*, 5 Ex., 601. *Morrell* v. *Wotton*, 16 Beav., 197

On Banking Obligations

43. 1. A banker is a trader whose business consists in buying money, or money and Debts, in exchange for which he gives his own Credit

2. A banker gives his Credit in two forms—

(*a*) His own **Promissory Notes**

(*b*) Credits in his books, termed in banking language **Deposits**

3. Banking Obligations are Bank Notes, Deposits, Cheques, Deposit Receipts, Letters of Credits, Bankers' Drafts, and Circular Notes

44. No banker who was not on the 6th of May, 1844, law-

fully issuing his own notes; nor any banker then lawfully issuing his own notes who has become bankrupt, or discontinued the issue of bank notes; nor any person since that date, may become a party to any obligation payable to bearer on demand, in any part of the United Kingdom

7 & 8 Vict. (1844), c. 32, ss. 10, 11, 12. 17 & 18. Vict. (1854), c. 83, s. 11

45. No banking partnership consisting of more than *ten* (*a*) persons in London, or within 65 miles thereof, may borrow, owe, or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof (*b*)

(*a*) 20 & 21 Vict. (1857), c. 49, s. 13
(*b*) 3 & 4 Will. 4 (1833), c. 98, s. 3

46. A **Bank Note** is defined by Statute to be—"Any Bill, Draft, or Note (other than Notes of the Bank of England) which shall be issued by any banker, or the agent of any banker, for the payment of money to the bearer on demand, and any Bill, Draft, or Note so issued, which shall entitle, or be intended to entitle, the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of issuing it, to the payment of any sum of money on demand, whether the same shall be so expressed or not, in whatever form and by whomsoever such bill, draft, or note, shall be drawn or made"

17 & 18 Vict. (1854), c. 83, s. 11

47. The following establishments only may issue obligations payable to bearer on demand in England—

1. The Bank of England
2. Private banking firms which were lawfully issuing their own notes on the 6th day of May, 1844, and which have not become bankrupt, or discontinued such issue since that date
3. Joint stock banks formed under Stat. 7 Geo. 4 (1826), issuing their own notes at a distance not less than 65 miles from London

48. The following provisions relating to the issue of Notes by the Bank of England are at present in force—

1. The Bank is divided into the banking department and the issue department

7 & 8 Vict. (1844), s. 32, s. 1

2. The issue department creates and issues to the banking department Notes in exchange for £15,000,000 of public securities and any amount of gold and silver coin and bullion, of which the silver coin and buillion must not be more than one-fifth part

7 & 8 Vict. (1844), c. 32, ss. 2, 3, 5

3. The banking department may not issue notes to any person whatever except in exchange for other notes, or such as they have received from the issue department in terms of the Act

7 & 8 Vict. (1844), c. 32, s. 2

4. Any person may demand bank notes in exchange for standard gold bullion at the rate of £3 17s. 9d. per ounce

7 & 8 Vict. (1844), c. 32, s. 4

5. If any banker who was lawfully issuing his own notes on the 6th day of May, 1844, ceases to do so, the Crown in council may authorise the Bank to increase its issues on public securities to any amount not exceeding two-thirds of the amount of notes withdrawn from circulation

7 & 8 Vict. (1844), c. 32, s. 5

6. So long as the Bank pays its notes in legal coin on demand they are legal tender of payment for all sums *above* £5, by all persons, except by the Bank itself, or any of its branches

3 & 4 Will. 4 (1833), c. 98, s. 4

7. Notes issued at any branch of the Bank must be made payable in coin at that branch as well as in London (*a*): no branch may issue notes not made payable there (*b*): and no note not made specially payable at any branch is liable to be paid there (*c*)

(*a*) 7 & 8 Geo. 4 (1826), c. 46, s. 15
(*b*) 3 & 4 Will. 4 (1833), c. 98, s. 4
(*c*) 3 & 4 Will. 4 (1833), c. 98, s. 6

8. Bank of England notes may circulate, and be offered in payment, but they are not legal tender in Scotland (*a*): or Ireland (*b*)

(*a*) 8 & 9 Vict. (1845), c. 35, s. 15
(*b*) 8 & 9 Vict. (1845), c. 37, s. 6

9. No person except bankers lawfully issuing their own notes may make, sign, issue, or re-issue, any promissory note payable to

bearer on demand in England, under a penalty of £20 for each offence

7 Geo. 4 (1826), c. 6, s. 3

10. No person may by any art, device, or means whatsoever, publish, utter, negotiate, or transfer, in any part of England, any promissory or other note, draft, engagement, or undertaking in writing made payable on demand to the bearer thereof, and being negotiable or transferable for the payment of any sum of money less than five pounds, or on which less than the sum of five pounds shall remain undischarged, which shall have been made or issued or shall purport to have been made in Scotland or Ireland, or elsewhere out of England, under a penalty of not less than five nor more than twenty pounds for each offence

9 Geo. 4 (1828), c. 68, s. 1

11. By Statute 7 Anne (1709), c. 7, s. 61, no banking partnership exceeding six persons, other than the Bank of England, might borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof

12. By Statute 7 Geo. 4 (1826), c. 49, partnerships consisting of an unlimited number of members might carry on the business of banking, and make and issue bills and notes payable on demand at any place in England, exceeding the distance of 65 miles from London, and not elsewhere, and borrow, owe, or take up any sum or sums of money on their bills or notes so made and issued

13. Such partnerships may not have any house of business or establishment as bankers in London, or at any place not exceeding 65 miles from London

7 Geo. 4 (1826), c. 46, s. 1

14. Every member of such partnership shall be liable for all money borrowed, from the time he became a member, and for all bills and notes which are due and unpaid, or which become payable after he has become a member

7 Geo. 4 (1826), c. 46, s. 1

15. No such banking company may issue or re-issue in London or at any place not exceeding 65 miles from London, any bill or note payable on demand, or any bank post bill, nor draw upon any partner nor agent, or other persons resident within these limits,

any bill of exchange payable on demand, or for a less amount than £50, under a penalty of £50 for each offence

7 Geo. 4 (1826), c. 46, s. 2

16. Such banking company may draw any bill for any sum of £50, or upwards, payable in London or elsewhere, at any period after date or after sight

7 Geo. 4 (1826), c. 46, s. 19

17. Such banking company may not borrow, owe, or take up in London or at any place not exceeding 65 miles from London, any sum of money on any bill or promissory note payable on demand, or at any less time than six months from the borrowing thereof, under a penalty of £50 for each offence; but they may discount in London or elsewhere any bills of exchange not drawn by or upon them, or by or upon any person on their behalf

7 Geo. 4 (1826), c. 46, ss. 3, 19

18. All banks in London or within 65 miles of it, may draw, accept, or indorse bills of exchange, not being payable to bearer on demand

7 & 8 Vict, (1844), c. 32, s. 11

19. All banks of issue existing on the 6th of May, 1844, may continue to issue an amount of notes not exceeding on an average of four weeks, such an average sum as they were issuing during the 12 weeks preceding the 27th April, 1844, certified by the Commissioners of Stamps and Taxes

7 & 8 Vict. (1844), c. 32, s. 13

20. If any two or more banks of issue become united, such united bank may continue to issue the aggregate average amount of notes circulated by the separate banks, provided the united bank does not exceed *ten* (1) persons

7 & 8 Vict. (1844), c. 32, s. 17
(1) 20 & 21 Vict. (1857), c. 49

21. If any banker in his monthly average exceeds his authorised issue, he is to forfeit the excess

7 & 8 Vict. (1844), c. 32, s. 17

22. Every bank of issue must send to the Commissioners of Stamps and Taxes, weekly, an account of its issues, shewing the amount of its notes in circulation on every day of the preceding week, and also the average during the week; and at the end of

every period of four weeks, a statement of the average amount of the said four weeks, along with the authorised amount, duly verified, in the case of a private banker, by the signature of the banker or his cashier; and in the case of a company or partnership, by the signature of the managing director, partner, or chief cashier. Any neglect or refusal to render such an account, or a false return, incurs a penalty of £100

7 & 8 Vict. (1844), c. 32, s. 18

23. All existing banking companies may register themselves under the Limited Liability Act, 1858, upon giving 30 days' notice to each of their customers

21 & 22 Vict. (1858), c. 91, s. 1

49. If there be several partners in a country bank of issue, the right of issue, on the death of the other partners, belongs exclusively to the surviving partner

Smith v. *Everett*, 27 Beav., 446

50. 1. Tender of payment in country bank notes is good, if not objected to on that account (*a*)

2. Even if a banker tender his own notes which are afterwards dishonoured (*b*)

(*a*) *Vernon* v. *Bouverie*, 2 Show., 296. *Tassel* v. *Lewis*, Ld. Raym., 743. *Ward* v. *Evans*, 2 Ld. Raym., 298. *Polglass* v. *Oliver*, 2 Tyr., 89. *Owenson* v. *Morse*, 7 T. R., 64. *Lockyer* v. *Jones*, Peake, 239. *Tiley* v. *Courtier*, 2 C. & J., 6n. *Pickard* v. *Bankes*, 13 East., 20. *Shipton* v. *Casson*, 8 D. & R., 130. *Clarke* v. *Shee*, 1 Cowp., 197

(*b*) *Guardians of Lichfield Union* v. *Green*, 1 H. & N., 884

51. 1. If country bank notes be taken in payment of goods at the time of the sale, and as part of the contract, so that no debt is created, and without indorsement, the vendor takes them at his own risk, and has no remedy against the transferor, if the banker fails before he obtains payment of them

2. But if the transferor knew at the time he offered the notes in payment that the banker had failed, he is liable

3. But if the note be taken, not at the time of the exchange, but in payment of a pre-existing debt, however short a period has elapsed between the creation of the debt and the tender of the notes, if the transferee presents the notes within due time, and

finds that the banker has failed, and gives due notice of dishonour to the transferor, he may demand payment of his original debt

Vernon v. *Bouverie*, 2 Show., 296. *Cooksey* v. *Bouverie*, 2 Show., 296. *Ward* v. *Evans*, Ld. Raym., 928. *Moore* v. *Warren*, 1 Stra., 415. *Holme* v. *Barry*, 1 Stra., 415. *Turner* v. *Meade*, 1 Stra., 416. *Manwaring* v. *Harrison*, 1 Stra., 508. *Howard* v. *Bank of England*, 1 Stra., 550. *Camidge* v. *Allenby*, 6 B. & C., 373. *Rogers* v. *Langford*, 1 C. & M., 637. *Robson* v. *Oliver*, 10 Q. B., 704

52. 1. If a customer pays into his account with his banker, the notes of another banker, for which his banker gives him either credit in account, or a deposit receipt; and if the banker on duly presenting the notes for payment finds that the banker who issued them has failed, and if he gives due notice of dishonour to his customer, he may cancel the credit (*a*)

2. But if instead of demanding payment of the notes he takes a credit in account with the banker who issued the notes, that is equivalent to payment, and he is liable to his customer, if the other banker fails (*b*)

(*a*) *Timmins* v. *Gibbons*, 18 Q. B., 722
(*b*) *Gillard* v. *Wise*, 5 B. & C., 134

53. If one person changes a bank note as a favour for another, and if on duly presenting the note for payment he finds that the banker has failed, and if he gives due notice of dishonour he may demand back his money

Rogers v. *Langford*, 1 C. & M., 637. *Turner* v. *Stones*, 1 D. & L., 122

54. 1. Bank notes made payable at a particular place must be presented there for payment, to enable the holder of them to sue the maker (*a*)

2. Even if the banker is notoriously insolvent and has closed his place of business, that will not excuse the want of presentment (*b*)

3. But between third parties, if a banker has become notoriously insolvent and has closed his place of business, presentment of his notes there is not necessary to charge the transferor, if the transferee is informed of the banker's stoppage of payment within the time limited for presentment, and gives notice of dishonour to

the transferor within reasonable time after being informed of the fact (*c*)

4. And reasonable time for notice of dishonour is not necessarily limited to the time for presentment for payment (*d*)

(*a*) *Sanderson* v. *Bowes*, 11 East., 500. *Dickinson* v. *Bowes*, 16 East., 110. *Bowes* v. *Howe*, 5 Taunt., 30. *Butterworth* v. *Lord Despencer*, 3 M. & S., 150. *Emblin* v. *Dartnell*, 12 M. & W., 830. *Spindler* v. *Grellet*, 1 Ex., 384. *Sands* v. *Clarke*, 8 C. B., 751

(*b*) *Bowes* v. *Howe*, 5 Taunt., 30. *Sands* v. *Clarke*, 8 C. B., 751

(*c*) *Henderson* v. *Appleton*, Chit., 8th ed., p. 388. *Turner* v. *Stones*, 1 D. & L., 122. *Robson* v. *Oliver*, 10 Q. B., 704

(*d*) *Robson* v. *Oliver*, 10 Q. B., 704

55. If country bank notes are given in payment to a servant, such acceptance by the servant does not bind the master, and he has full time to present them for payment after he has received them from his servant

Ward v. *Evans*, 2 Ld. Raym., 928. *James* v. *Holditch*, 8 D. & R., 40

56. If payment for goods be made in country bank notes, and the banker fails before delivery of the goods, the vendor may retain them if not sent, and has the right of stoppage *in transitu*

Owenson v. *Morse*, 7 T. R., 64

57. If a person pays his acceptance by notes in which he has no property, it is no payment, and he is still liable

Mannin v. *Cary*, 1 Lutw., 277

58. A bank note made payable at two places may be presented at either, and if payment be refused at once it is no *laches*, even though it might be more convenient to present it at the other where it would have been paid

Beeching v. *Gower*, Holt, N. P., 313

59. 1. The holder of country bank notes must circulate them or present them for payment within banking hours (*a*), of the next day after he has received them, if the banker lives in the same place, to charge the transferor if the banker fails (*b*)

2. If the banker lives in a different place, he must transmit

them for payment by the post of the next day after he has received them (*c*)

3. The receiver has all the banking hours of the next day after he has received them to present them for payment (*c*)

4. The sender may cut the notes in halves, and send one set of halves the day after he has received them, and the second set the day after that (*c*)

5. The time for the receiver to present the notes for payment does not begin to run until he has received the second set of halves (*c*): the sender has not parted with the property of the notes until he has sent the second set of halves: and until he has done that he may reclaim the first set of halves (*d*)

6. Sunday, Christmas day, Good Friday, a public fast or thanksgiving day; or a day on which a man is forbidden by his religion to transact secular business (*e*); but not a bank holiday (*f*); are not counted: therefore, if a man receives a bank note on such a day, he has till the second day after to present or transmit it for payment (*g*)

(*a*) *Parker* v. *Gordon*, 7 East., 385. *Elford* v. *Teed*, 1 M. & S., 28. *Jameson* v. *Swinton*, 2 Taunt., 224. *Whitaker* v. *Bank of England*, 1 C. M. & R., 744

(*b*) *Manwaring* v. *Harrison*, 1 Stra., 508. *Medcalf* v. *Hall*, 3 Doug., 113. *Appleton* v. *Sweetapple*, 3 Doug., 137. *Robson* v. *Bennet*, 2 Taunt., 388. *Rickford* v. *Ridge*, 2 Camp., 537. *Beeching* v. ———, Holt, N. P., 315. *Williams* v. *Smith*, 2 B. & Ald., 496. *Boddington* v. *Schlencker*, 4 B. & Ad., 752. *Pocklington* v. *Sylvester*, Chitty, 9th ed., p. 385. *Moule* v. *Brown*, 4 Bing., N. C., 266. *Hare* v. *Henty*, 10 C. B., N. S., 65

(*c*) *Williams* v. *Smith*, 2 B. & Ald., 496

(*d*) *Smith* v. *Mundy*, 2 E. & B., 22

(*e*) *Lindo* v. *Unsworth*, 2 Camp., 602

(*f*) 34 Vict. (1871), c. 17

(*g*) *Tassel* v. *Lewis*, 1 Ld. Raym., 743. 39 & 40 Geo. 3 (1800), c. 42. 7 & 8 Geo. 4 (1827), c. 15

On Cheques

60. 1. The relation between a banker and his customer on an ordinary banking account is that of simple debtor and creditor: and not that of trustee and *cestui que trust*

2. Money paid by a customer to a banker belongs absolutely to the banker; it is a *Mutuum*, or Loan, and not a *Depositum*, or Bailment

3. In exchange for the money the banker gives his customer a Credit, or a right to demand an equal sum of money with or without notice

Vernon v. *Hankey*, 2 T. R., 113. *Carr* v. *Carr*, 1 Meriv., 541n. *Sleech's case*, 1 Mer., 560. *Sims* v. *Bond*, 5 B. & Ad., 392. *Bank of England* v. *Anderson*, 3 Bing., N. C., 589. *Taylor* v. *Taylor*, 1 Jur., 401. *Gaunt* v. *Taylor*, 2 Hare, 413. *Foley* v. *Hill*, 2 H. L. Ca., 31. *Watts* v. *Christie*, 11 Beav., 546. *Ex parte Waring*, 36 L. J., Ch., 151

61. A Credit in a banker's books in favour of a customer, is in banking language, termed a **Deposit**

Banking Credits, or Deposits, are of two sorts—

1. Where the customer has the right of requiring repayment of his money without notice. This kind of account, in banking language, is termed **a Drawing** or **Current Account**

2. Where the customer agrees not to demand repayment without a certain notice. This account in banking language is termed a **Deposit Account.** In exchange for the money, the banker gives his customer a receipt, termed a **Deposit Receipt** containing the terms of the contract

3. Formerly these deposit receipts were what was termed non-negotiable. They were made payable to the customer himself only, and, consequently, if the customer transferred his deposit receipt to any one else, the transferee could not sue the banker at Law in his own name, though he might in the name of the transferor; but he might sue him in Equity. But since the Supreme Court of Judicature Act, which enacts that the rules of Equity shall prevail over those of Common Law, a Deposit Receipt is as transferable as a Bank Note or a Cheque

62. A Credit in account or Deposit, if taken instead of money, is good payment

Gillard v. *Wise*, 5 B. & C., 134

63. 1. If a customer leaves a deposit or balance on his account without operating on it for six years, the Statute of Limitations applies, and the banker is not liable (*a*)

But if the banker enters up interest to the credit of his customer, that will save the statute (*b*)

(*a*) *Pott* v. *Clegg*, 16 M. & W., 321. *Foley* v. *Hill*, 2 H. L., Ca., 39

(*b*) 9 Geo. 4 (1828), c. 14, s. 1. *Bamfield* v. *Tupper*, 7 Ex., 27. *Bealy* v. *Greenslade*, 2 C. & J., 61

64. A Deposit or Balance on a banking account passes by will under the words "all his ready money" (*a*); "all debts due to him" (*b*); but not under "all his stock in trade" (*c*)

(*a*) *Vaisey* v. *Reynolds*, 5 Russ., 12. *Taylor* v. *Taylor*, 1 Jur., 401. *Parker* v. *Marchant*, 1 Phil., 356. *Manning* v. *Purcell*, 2 Sm. & Gif., 292

(*b*) *Carr* v. *Carr*, 1 Mer., 561n

(*c*) *Stuart* v. *Marquis of Bute*, 11 Ves., 666

65. An Order on a drawing account at a banker's, payable to any person, or "bearer, or "order," on demand, is in modern commercial language usually termed a **Cheque**

66.* A Cheque is a bill of exchange drawn on a banker payable on demand

Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque

Subject to the provisions of this Act—

1. Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid

2. In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case

3. The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him

67. By the General Stamp Act (*a*) drafts or orders for the

payment of money to bearer on demand were exempted from stamp duty, provided that—

1. They were drawn upon a banker or a person acting as a banker

2. The place where they were drawn did not exceed 15 (*b*) miles from the banker's place of residence

3. The place where they were drawn was truly stated on them

4. They were issued on the day or the day after they were dated

5. The payment was directed to be made in money, and not in bills or notes

(*a*) 55 Geo. 3 (1815), c. 184, sched.
(*b*) 9 Geo. 4 (1828), c. 49, s. 15

68. The stamp duty on any draft for the payment of money to bearer or to order on demand, or at sight or presentation is one penny

33 & 34 Vict. (1870), c. 97, s. 50

69. Every person who makes or issues an unstamped draft violating any one of the previous conditions, is liable to a penalty of £100 ; every one knowingly taking it to a penalty of £20 ; any banker knowingly paying it to a penalty of £100 ; and he is not allowed it in account against the persons by whom or for whom it was drawn, or any person claiming under them

55 Geo. 3 (1815), c. 184, s. 13

70. 1. If any person remits an unstamped draft payable to bearer on demand, drawn upon a banker, to any place more than 15 miles distant from the place where such draft is payable, or circulate, negotiate, or receive in payment such a draft in such a place, he shall forfeit £50 (*a*)

2. But if it be duly stamped it may be remitted to or circulated and negotiated in such a place (*b*)

(*a*) 17 & 18 Vict. (1854), c. 83, s. 7
(*b*) 17 & 18 Vict. (1854), c. 13, s. 8

71. 1. The penny stamp on such a draft may be either impressed on the paper or adhesive : and may either be a draft or a receipt stamp (*a*)

2. If the stamp used be adhesive, the person who signs the draft must, before he issues it, cancel or obliterate the stamp by writing his name or initials over it, under a penalty of £10

(*a*) 17 & 18 Vict. (1854), c. 83, s. 10
(*b*) 33 & 34 Vict. (1870), c. 97, s. 24, § 2

72. The penalty for issuing an unstamped cheque on a banker is the same as issuing an unstamped bill of exchange

21 & 22 Vict. (1858), c. 20, s. 2

73. 1. If any draft or order subject to the penny stamp duty comes unstamped into the hands of a banker, he may affix the stamp and cancel it, and pay the draft and charge the duty against the person liable, or deduct it from the sum payable

2. The draft is then good and valid, so far as it relates to the stamp duty, but it does not relieve the person who issued it unstamped from the penalty

33 & 34 Vict. (1870), c. 97, c. 54, § 3

74. A draft or order for payment sent or delivered by the drawer or maker to the banker or person acting as such, by, or through, whom the payment is to be made, and not delivered to the person to whom the payment is to be made, or to any person on his behalf, requires a penny stamp and may be post dated

33 & 34 Vict. (1870), c. 97, s. 48, § 3

75. If a draft or order be duly stamped previously to issue, whether it be payable to bearer or order on demand, it may be drawn at or remitted to any distance from the place of payment; it may be drawn upon any person and requires no place nor date upon it

16 & 17 Vict. (1853), c. 59, sched.

76. If it be issued, stamped, and post dated, or dated on a day subsequent to its issue—

1.—If the cheque be payable to bearer—

(1.) It is wholly void in the hands of all parties cognisant of the facts; it cannot be given in evidence in any proceeding in law or equity to establish a valid contract between them (*a*)

(2.) But it is valid in the hands of an innocent indorsee for value who was not aware of the facts (*b*)

(3.) If a banker pays such an instrument without knowing the facts, the payment is good (*c*)

(4.) It may be used in evidence to prove a fraud (*d*); or in any criminal proceeding (*e*)

(*a*) 31 Geo. 3 (1691), c. 25, s. 19. *Allen* v. *Keeves*, 1 East., 435. *Whitwell* v. *Bennett*, 3 B. & P., 559. *Swan* v. *Blair*, 3 Cl. & Fin., 610. *Serle* v. *Norton*, 9 M. & W., 309. *Dunsford* v. *Curlewis*, 1 F. & F., 702. *Oliver* v. *Mortimer*, 2 F. & F., 702. *Austin* v. *Bunyard*, 6 B. & S., 687

(*b*) *Williams* v. *Jarrett*, 5 B. & Ad., 32. *Austin* v. *Bunyard*, 6 B. & S., 687

(*c*) *Watson* v. *Poulson*, 15 Jur., 1,111

(*d*) *Watson* v. *Poulson*, 15 Jur., 1,111

(*e*) 17 & 18 Vict. (1854), c. 83, s. 27

2.—If the cheque be payable to order—

(1.) It is a valid instrument and may be received in evidence (*a*); and should be paid by a banker at its date, even though he knew it to be post dated (*b*)

(2.) But the issuer is liable to a penalty for issuing a bill not duly stamped (*c*)

(*a*) *Key* v. *Mathias*, 3 F. & F., 279. *Whistler* v. *Forster*, 14 C. B., N. S., 248

(*b*) *Emanuel* v. *Robarts*, 17 L. T., N. S., 646

(*c*) 55 Geo. 3 (1815), c. 184, s. 11. 21 & 22 Vict. (1858), c. 20, s. 2

77. A post dated cheque drawn by a member of a firm who has no power to bind his partner by bill is absolutely void in the hands of a person cognisant of the fact, whether it be payable to bearer or to order

Foster v. *Mackreth*, L. R., 2 Eq., 163

(2.) A banker who accepts or engages to pay a cheque must include such cheques in the return of his issue of notes

7 & 8 Vict. (1844), c. 32, s. 11

17 & 18 Vict. (1854), c. 83, s. 11

78. 1. By the custom of bankers, the contract between a banker and his customer having an ordinary drawing or current account with him, is to pay on demand, either to him or to any one else to whom his customer may assign them, whatever funds he may have at his customer's credit, within a reasonable time

after he has received them, and to accept his customer's bills to that amount (*a*)

2. By the custom of bankers' possession of funds is equivalent to acceptance, and admission of funds is a legal acceptance of a cheque drawn by a customer (*b*)

3. A verbal promise to pay, or a collateral writing promising to pay, or any mark such as initials placed on a cheque, the well understood meaning of which is a promise to pay, is a legal acceptance by a banker having funds of his customer

4. The Acts, 1 & 2 Geo. 4 (1821), c. 78, s. 2, and 19 & 20 Vict. (1856), c. 97, s. 6, requiring the acceptance of a bill to be in writing on the bill, do not apply to the promise of a banker to pay a cheque, having funds of his customer

(*a*) *Marzetti* v. *Williams*, 1 B. & Ad., 415. *Swan* v. *Bank of Scotland*, 2 Mont. & Ayr., 656. *Foley* v. *Hill*, 2 H. L., Ca., 28. *Watts* v. *Christie*, 11 Beav., 546. *Robarts* v. *Tucker*, 16 Q. B., 560. *Rolin* v. *Steward*, 14 C. B., 595

(*b*) *Stevens* v. *Hill*, 5 Esp., 247. *Ardern* v. *Rowney*, 5 Esp., 254. *Robson* v. *Bennett*, 2 Taunt., 388. *Kilsby* v. *Williams*, 5 B. & Ald., 816. *George* v. *Surrey*, 1 M. & M., 516. *Boyd* v. *Emerson*, 2 A. & E., 184. *Marzetti* v. *Williams*, 1 B. & Ald., 415. *Robarts* v. *Tucker*, 16 Q. B., 570

79. 1. A cheque is payment unless dishonoured, and tender of payment by cheque is good, unless objected to on that account

2. A cheque, to be good tender, must be unconditional; and if the creditor refuses it as being conditional, he may commence an action against the debtor before he returns the cheque (*b*)

3. But the fact of a cheque being drawn in favour of any one is no proof of payment, as it may be drawn in any one's name: there must be evidence that the money came into the creditor's hands, as by his indorsement (*c*)

4. A cheque is not evidence *per se* of a loan from the drawer to the payee (1): nor to establish a set-off (2): nor of a loan from the drawee (a banker) to the drawer (3): without further evidence of the circumstances under which it was given (*d*)

5. But, if a debt be proved to have existed between the drawer and the payee, a cheque, though not given directly by the drawer to the payee, if proved to have passed through the payee's hands and been paid to him, is *primâ facie* evidence of the payment of the debt, unless contradicted by collateral evidence (*e*)

(*a*) *Pearce* v. *Davis*, 1 Mo. & Rob., 365. *Jones* v. *Arthur*, 8 Dowl., 442. *Bevan* v. *Hill*, 2 Camp., 381

(*b*) *Hough* v. *May*, 4 A. & E., 954

(*c*) *Egg* v. *Barnett*, 3 Esp., 196. *Cary* v. *Gerrish*, 4 Esp., 9

(*d*) (1) *Cary* v. *Gerrish*, 4 Esp., 9. *Lloyd* v. *Sandilands*, Gow, 15. *Pearce* v. *Davis*, 1 Mo. & Rob., 365

(2) *Aubert* v. *Welsh*, 4 Taunt., 293

(3) *Fletcher* v. *Manning*, 13 L. J., Ex., 150

(*e*) *Egg* v. *Barnett*, 3 Esp., 196. *Mountford* v. *Harper*, 16 M. & W., 825. *Boswell* v. *Smith*, 6 C. & P., 60

80. When a customer has placed securities in the hands of his banker, and is allowed to draw against them in a certain well-understood way, the banker cannot change the usual course of dealing, and dishonour his customer's cheques without giving him notice

Cumming v. *Shand*, 5 H. & N., 95

81. A banker who pays a cheque must cancel it by crossing out the drawer's signature, under a penalty of £50

55 Geo. 3 (1815), c. 184, s. 19

82. Paid cheques are the property of the drawers, who may demand them back at any time: unless they be overdrafts, for then the banker has a right of action on them

Partridge v. *Coates*, 1 Ry. & Mo., 156. *Burton* v. *Payne*, 2 C. & P., 520. *Reg.* v. *Watts*, 2 Den. C. C. R., 14

83. No cheque, draft, or order for the payment of money, drawn by any person or accountant authorised to draw for the public service, is payable at the Bank of England after 3 p.m.

4 & 5 Will. 4 (1834), c. 15, s. 21

84. 1. If a banker cancels the drawer's signature to a cheque, and if, before actual payment, he discovers any reason why he should not pay it, he may withhold payment (*a*)

2. But if the money be actually paid over to the presenter of the cheque in mistake, the property in the money is gone from the banker, and he cannot retake it (*b*)

(*a*) *Fernandey* v. *Glynn*, 1 Camp., 426

(*b*) *Chambers* v. *Miller*, 13 C. B., N. S., 125

85. Cheques may be taken in execution

1 & 2 Vict. (1838), c. 110, s. 12. *Watts* v. *Jefferyes*, 3 Mac. & Gor., 422

86. 1. If a cheque payable to order bears an indorsement purporting to be that of the payee, the banker is not bound to inquire into its genuineness: and an indorsement by procuration is within the meaning the Act (*a*)

2. But if any other banker cashes it for the bearer, or gives him credit for it, and obtains payment of it from the banker upon whom it is drawn, he will be liable to the drawer (*b*)

(*a*) 16 & 17 Vict. (1852), c. 52, s. 19. *Hare* v. *Copland*, 13 Ir. Com., L. R., 426. *Charles* v. *Blackwell, The Times*, May 6, 1876

(*b*) *Ogden* v. *Benas*, L. R., 9 C. P., 513. *Arnold* v. *The Cheque Bank, The Times*, April 24, 1876

87. An infant cannot draw a valid cheque except as an agent

Calland v. *Loyd*, 6 M. & W., 26

88. 1. A cheque is an assignment of a *chose-in-action*, and when communicated or notified by the holder to the banker is a complete assignment of the fund (*a*)

2. If a cheque be notified to the banker and the drawer dies before it is paid, the holder is entitled to payment (*b*)

(*a*) *Snellgrave* v. *Bailey*, Ridg. ca. t., Hard., 202. *Morrell* v. *Wootton*, 16 Beav., 197

(*b*) *Bromley* v. *Brunton*, L. R., 6 Eq., 275

89. 1. If a banker pays a cheque with a forged signature, he must bear the loss (*a*)

2. So if the body of the cheque be written by his customer, and fraudulently altered by another person, so as to be payable for a larger sum than originally drawn, and, the banker not detecting the alteration, pays it, he must bear the loss of the excess (*b*)

3. But if the customer authorises another person to write the body of the cheque, and that person fraudulently alters the cheque so as to make it payable for a larger sum than authorised, and so the body of the cheque is all in the same handwriting, the banker will not be liable (*c*)

4. So if a banker pays a cheque under circumstances which are evidently suspicious, he must bear the loss (*d*)

(*a*) *Young* v. *Grote*, 4 Bing,, 253. *Hall* v. *Fuller*, 5 B. & C., 750
(*b*) *Hall* v. *Fuller*, 5 B. & C., 750
(*c*) *Young* v. *Grote*, 4 Bing., 253
(*d*) *Scholey* v. *Ramsbottom*, 2 Camp., 485. The drawer had torn the cheque into four pieces, and thrown them away. A person found the pieces, pasted them together, and presented the cheque. The banker paid it, and was held liable

90. 1. A banker must pay his customer's cheques strictly in the order in which they are notified, communicated, or presented to him for payment (*a*)

2. He must debit his customer's account with cheques on the day they are notified or paid, and not on the day they are drawn (*b*)

3. Sums paid by a banker extinguish the debts created by sums paid to him in strict chronological order (*a*)

(*a*) *Robson* v. *Bennett*, 2 Taunt., 388. *Clayton's case*, 1 Mer., 572. *Bodenham* v. *Purchas*, 2 B. & Ald., 39. *Kilsby* v. *Williams*, 5 B. & Ald., 816. *Pennell* v. *Deffell*, 4 De G. M. & G., 372. *Bromley* v. *Brunton*, L. R., 6 Eq., 275
(*b*) *Goodbody* v. *Foster*, Byles, 8th ed., p. 25

91. 1. If a banker having funds of his customer wrongfully dishonours his cheque or bill made payable at the bank, so that the customer suffers damage, he has an action against the banker for such damage (*a*)

2. But such special damage must be laid and proved (*b*)

3. If the customer becomes bankrupt in consequence of the wrongful dishonour of his cheques, his assignees have an action against the banker

4. The holder of the cheque or bill may sue the banker on the instrument

(*a*) *Marzetti* v. *Williams*, 1 B. & Ald., 415. *Rolin* v. *Steward*, L. J.
(*b*) *Davies* v. *The Royal British Bank*, *The Times*, July 10, 1854

92. 1. The holder of a cheque is not entitled to enlarged time by presenting it through an agent

He must therefore pay a *plain* cheque into his banker's the same day that he receives it, and the banker has all the next day to present it, being the same time that the holder has (*a*)

2. Receiving a cheque payable to order does not enlarge the time for presentment (*b*)

3. But the holder of a crossed cheque which can only be paid through an agent, has all the next day to pay it into his banker's, and the banker has all the next day after that to present it (*a*)

(*a*) *Alexander* v. *Burchfield*, 3 Scott, N. R., 555. *Fenwick* v. *Dewar, The Times*, Feb. 22, 1867

(*b*) *Fenwick* v. *Dewar, The Times*, Feb. 22, 1867

93. 1. If the holder of a bill gives it up to the acceptor in exchange for his cheque, and the cheque is dishonoured, he may give notice of dishonour of the bill, and sue the drawer and indorsers; and the bill may be declared on as a lost bill (*a*)

2. A London banker is not guilty of negligence in giving up bills remitted to him for collection by his country correspondents to the acceptor, in exchange for his cheque, though it is dishonoured (*b*)

(*a*) *Ridley* v. *Bluckett*, Peake, Ad. Ca., 62

(*b*) *Russell* v. *Hankey*, 6 T. R., 12

94. If a creditor, being offered payment by his debtor's agent either in money or by his cheque, prefers his cheque, and the cheque is dishonoured, the debtor is still liable

Everett v. *Collins*, 2 Camp., 515

95. 1. If a cheque is given on a fraudulent misrepresentation of facts (*a*): or on a verbal condition which the drawer finds is to be broken (*b*): he may stop payment of the cheque

2. But he is liable to an innocent holder for value (*c*)

(*a*) *Mills* v. *Oddy*, 3 Dowl., 722

(*b*) *Wienholt* v. *Spitta*, 3 Camp., 375

(*c*) *Watson* v. *Russell*, 3 B. & S., 34

96. 1. A cheque may be presented any time within six years of its date to charge the banker, and the drawer of the banker does not fail (*a*)

2. If the banker fails with sufficient funds of his customer to meet the cheque, the same rule applies to cheques as to bank notes, the payee must present it within banking hours, or remit it by post the day after he receives it; otherwise it is *laches* and he must bear the loss (*b*)

3. If the cheque is indorsed away, the drawer's liability is discharged after banking hours of the day after he has issued it: and the liability of each indorser in succession is discharged after banking hours of the day after he has indorsed it

4. If the drawer has not funds to meet the cheque in his banker's hands when he fails, he is liable immediately

(*a*) *Serle* v. *Norton*, 2 Moo. & B., 401. *Robinson* v. *Hawksford*, 9 Q. B., 52. *Laws* v. *Rand*, 3 C. B. N., 442

(*b*) *Bishop* v. *Chitty*, 2 Stra., 1195. *Appleton* v. *Sweetapple*, 3 Doug., 137. *Rickford* v. *Ridge*, 2 Camp., 537. *Beeching* v. ——, Holt's N. P., 315n. *Pocklington* v. *Sylvester*, Ch. & Hu., 9th edit., 385. *Moule* v. *Brown*, 5 Scott, 694. *Bailey* v. *Bodenham*, 16 C. B., N. S., 288

97. The transferee of an overdue cheque is not subject to the equities of the transferor, as the transferee of an overdue bill

Rothschild v. *Corney*, 9 B. & C., 388

98. If a customer pays into his account a cheque drawn upon the banker by another customer, and the banker takes it without engaging to pay it, he may receive it as the agent of the holder, and has the same time to present it and consider if he will pay it, as if it were drawn upon another banker

Boyd v. *Emerson*, 2 A. & E., 184

99. A cheque drawn by several persons as a collateral security is a joint, and not a joint and several, liability

Other v. *Iveson*, 3 Drew., 177

100. A change in the names on the cheques supplied by a banking firm to their customers is sufficient notice to them of the change of the partners

Barfort v. *Goodall*, 3 Camp., 46

101. 1. If a customer has an account of a fiduciary nature, such as Trustee, Executor, or otherwise, a banker may not refuse his cheques on the account, because he may believe that the customer intends to apply the funds in a breach of trust (*a*)

2. And he will not be liable to the *cestui que trust* if he is not privy to the breach of trust (*b*)

3. But if he acts in concert, agreement, or collusion with his customer in committing the breach of trust; and especially if he obtains some benefit by it, as by his customer paying a debt of his own to him by means of cheques drawn on the trust account, he must replace the trust fund (*b*)

4. The Statute of Limitations does not apply to a banker misapplying a trust fund (*c*)

(*a*) *Keane* v. *Robarts*, 4 Mad., 332. *Nicholson* v. *Knowles*, 5 Mad., 47. *Fyler* v. *Fyler*, 3 Beav., 550. *Lockwood* v. *Abdy*, 14 Sim., 437. *Maw* v. *Pearson*, 28 Beav., 196. *Gray* v. *Johnston*, L. R., 3 H. L., 1

(*b*) *Hill* v. *Simpson*, 7 Ves., 152. *Keane* v. *Robarts*, 4 Mad., 333. *Wilson* v. *Moore*, 1 My. & K., 126, 137. *Pannell* v. *Hurley*, 2 Coll., C. C., 240. *Fyler* v. *Fyler*, 3 Beav., 550. *Bodenham* v. *Hoskyns*, 2 De G. M. & G., 903. *Bridgman* v. *Hill*, 14 Beav., 302. *Hardy* v. *Caley*, 33 Beav., 365

(*c*) *Bridgmam* v. *Hill*, 24 Beav., 302

102. If an account in a bank stands in the name of several persons, unless there be a special contract with the banker to the contrary—

1. 1. If they be regarded in law as *one* person, such as partners (*a*): executors or administrators (*b*): each may draw cheques, and payment to one is payment to all

2. Even after a dissolution of partnership and a receiver has been appointed to collect the partnership debts (*c*)

3. But if one draws a cheque the others may countermand it (*d*)

(*a*) *Anon.*, 12 Mod., 446. *Henderson* v. *Wild*, 2 Camp., 560. *Duff* v. *East India Co.*, 15 Ves., 198. *Hope* v. *Cust*, cited 1 East., 53. *Porter* v. *Taylor*, 6 M. & S., 156. *Tomlin* v. *Lawrance*, 3 Mo. & Pa., 555. *King* v. *Smith*, 4 C. & P., 108

(*b*) *Pond* v. *Underwood*, 2 Ld. Raym., 1210. *Carr* v. *Read*, 3 Atk., 695. *Jacome* v. *Harwood*, 2 Ves., 265. *Allen* v. *Dundas*, 3 T. R., 125. *Ex parte Rigby*, 19 Ves., 462. *Gaunt* v. *Taylor*, 2 Hare, 413. *Smith* v. *Everett*, 27 Beav., 446

(*c*) *Duff* v. *East India Co.*, 15 Ves., 198. *Porter* v. *Taylor*, 6 M. & S., 116. *King* v. *Smith*, 4 C. & P., 108

(*d*) *Gaunt* v. *Taylor*, 2 Hare, 413

2. But if they be *not* regarded in law as *one* person, such as Trustees (*a*): or Assignees of a bankrupt (*b*): all must sign. Directors of a company must sign as directors (*c*): and payment to less than all will not discharge the banker

(*a*) *Ex parte Rigby*, 19 Ves., 462. *Stone* v. *Marsh*, 6 B. & C., 551. *Husband* v. *Davis*, 2 Low. M. & P., 50

(*b*) *Carr* v. *Read*, 3 Atk., 695. *Innes* v. *Stephenson*, 1 Mo. & Rob., 145.

(*c*) *Serrell* v. *Derbyshire, Ry. Co.*, G. C. B., 811

3. If any of the assignees or trustees die the right remains with the survivors: and if any become disqualified, as by absconding, going to reside abroad, equity will direct the funds to be paid to the remaining ones

Staples v. *Staples; Shortbridge's case*, 12 Ves., 28. *Ex parte Collins*, 2 Cox, Eq. Ca., 427. *Ex parte Hunter*, 2 Rose, 363. 13 & 14 Vict. (1850), c. 60, s. 22

103. 1. If a banker, either at the request of a customer, or when a cheque is presented by the holder or his agent, places a "mark" on it as by his initials, signifying that the cheque is good and will be paid, such "mark" is a legal acceptance of the cheque by the banker (*a*)

2. A cheque so "marked" or accepted becomes a bank note of the banker who makes it (*b*)

(*a*) *Robson* v. *Bennett*, 2 Taunt., 388

(*b*) 7 & 8 Vict. (1844), c. 32, s. 11. 17 & 18 Vict. (1854), c. 83, s. 11. 33 & 34 Vict. (1870), c. 97, s. 45

104. 1. A banker must not pay any cheque of his customer presented after he has received notice of his having committed an act of bankruptcy (*a*), or of his death (*b*)

2. Payment of cheques notified or presented before such notice are good, and may be enforced by the holder; but payments after such notice are bad and will not discharge the banker (*c*)

(*a*) 1 Jac., 1, c. 15, s. 14. *Vernon* v. *Hankey*, 2 T. R., 119

(*b*) *Tate* v. *Hilbert*, 2 Ves., jun., 111

(*c*) 12 & 13 Vict. (1849), c. 106, s. 133. *Bromley* v. *Brunton*, L. R., 6 Eq., 275

105. 1. If a banking company has several branches, each with its own customers and accounts, each branch is considered as an independent bank, for the purpose of receiving and transmitting notice (*a*)

2. Each branch must collect its own cheques and bills, and

time will not be enlarged so as to permit it to collect them through its head office (*b*)

(*a*) *Corlett* v. *Jones*; *Clode* v. *Bailey*, 12 M. & W., 51
(*b*) *Woodland* v. *Fear*, 7 E. & B., 519

106. If a person changes a cheque as a favour for another person, and if the cheque be duly presented and dishonoured, he may give notice of dishonour, and recover the money

Wooland v. *Fear*, 7 E. & B., 519

107. 1. A **Letter of Credit** is a written reqnest by one person to another requesting the latter to give credit to a person named in it

2. If the request is unconditional, it is termed an **Open Credit**

3. If the request be on the condition that bills of lading be deposited as collateral security it is termed a **Document Credit**

4. A **Marginal** letter of credit is one by which a person named in the margin guarantees to another person that he shall receive credit from, or have his bills accepted by, another person

108. 1. Letters of credit must be stamped as bills

2. Except letters of credit, whether in sets or not, sent by persons in the United Kingdom to persons abroad, authorising drafts on the United Kingdom

33 & 34 Vict. (1870), c. 97, s. 48, § 1, and sched.

109. 1. If a banker pays a letter of credit upon a forged signature he is liable (*a*)

2. The 16 & 17 Vict. (1853), c. 59, s. 19, does not protect a banker paying a letter of credit with a forged signature (*b*)

(*a*) *Orr* v. *Union Bank of Scotland*, 1 Macq., H. L. Ca., 513
(*b*) *British Linen Co.* v. *Caledonian Insurance Co.*, 4 Macq., H. L. Ca., 107

110. 1. If a person obtains a letter of credit from a banker for a sum paid down, he may demand repayment without producing the letter

2. The banker can only prove payment by producing the draft of the person in whose favour it is drawn

Orr v. *Union Bank of Scotland*, 1 Macq., H. L. Ca., 513

111. The indorsee of a marginal letter of credit, not being on the face of it a document credit, is not bound in the absence of notice to inquire whether it is being used for the purpose for which it is granted

Maitland v. *Chartered Mercantile Bank of India, London, and China*, 2 Hem. & Mill., 440

112. 1. The holders of a banker's circular letters may demand payment of them from himself, as well as from his correspondents abroad

2. But he is not bound to cash them unless they are returned to him, or he receives an indemnity

Conflans Stone Quarry Co. v. *Parker*, L. R., 3 C. P., 1

113. The following are exempt from stamp duty—

1. Any draft or order drawn by any banker upon any other banker, not payable to bearer or order, and used solely for the purpose of settling or clearing any account between such banker

2. Any letter written by a banker to any other banker directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf

33 & 34 Vict. (1870), s. 97, sched.

Crossed Cheques

114.* 1. Where a cheque bears across its face an addition of—

(*a*) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(*b*) Two parallel transverse lines simply, either with or without the words "not negotiable";

that addition constitutes a crossing, and the cheque is crossed generally

2. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker

115.* 1. A cheque may be crossed generally or specially by the drawer

2. Where a cheque is uncrossed, the holder may cross it generally or specially

3. Where a cheque is crossed generally the holder may cross it specially

4. Where a cheque is crossed generally or specially, the holder may add the words "not negotiable"

5. Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection

6. Where an uncrossed cheqne, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself

116.* A crossing authorised by this Act is a material part of the cheque ; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing

117.* 1. Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof

2. Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the

banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be

118.* Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

119.* Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had

120.* Where the banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment

Stamp Duties on Bank Notes, Bills of Exchange and Promissory Notes, at present in force. (33 & 34 *Vict.* (1870), *c.* 97)

On Bank Notes

121. By the above Stamp Act it is enacted, s. 45—

"The term 'banker' means and includes any corporation, society, partnership, and persons, and every individual person carrying on the business of banking in the United Kingdom"

The term "bank note" means and includes—

(1) "Any bill of exchange or promissory note issued by any banker, other than the Governor and Company of the Bank of England, for the payment of money not exceeding one hundred pounds to the bearer on demand"

(2) "Any bill of exchange or promissory note so issued which entitles, or is intended to entitle, the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding one hundred pounds on demand, whether the same be so expressed or not, and in whatever form, and by whomsoever such bill or note is drawn or made"

S. 46.—"A bank note issued duly stamped or issued unstamped by a banker duly licensed, or otherwise authorised to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of such re-issuing"

S. 47, 1.—"If any banker not being duly licensed or otherwise authorised to issue unstamped bank notes, issues, or causes or permits to be issued, any bank note not being duly stamped, he shall forfeit the sum of £50"

2. "If any person receives, or takes any such bank note in payment or as a security, knowing the same to have been issued unstamped contrary to law, he shall forfeit the sum of £20"

Duties on Bank Notes

	£	s.	d.
For money not exceeding £1	0	0	5
Exceeding £1 and not exceeding £2 ...	0	0	10
„ £2 „ „ £5 ...	0	1	3
„ £5 „ „ £10 ...	0	1	9
„ £10 „ „ £20 ...	0	2	0
„ £20 „ „ £30 ...	0	3	0
„ £30 „ „ £50 ...	0	5	0
„ £50 „ „ £100 ...	0	8	6

Bills and Notes

S. 48, 1.—"The term 'Bill of Exchange' for the purposes of

this Act includes also draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned"

2.—"An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note, in satisfaction of any sum of money, or for the payment of any sum of money, out of any particular fund which may or may not be available, or upon any condition or conditions which may or may not be performed or happen, is to be deemed for the purposes of this Act a bill of exchange for the payment of money on demand"

3.—"An order for the payment of any sum of money weekly, monthly, or at any other stated periods; and also any order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same by the person to whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf, is to be deemed for the purposes of this Act a bill of exchange for the payment of money on demand"

S. 49, 1.—"The term 'Promissory Notes' means and includes any document or writing (except a bank note) containing a promise to pay any sum of money"

2.—"A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this Act a promissory note for the said sum of money"

S. 51, 1.—"The ad valorem duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps"

2. "Every person into whose hands any such bill or note comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates, or pays such bill or note, affix thereto a proper adhesive stamp, or proper adhesive stamps of sufficient amount and cancel every stamp so affixed thereto"

3. Provided as follows—

(*a*) "If at the time when any such bill or note comes into the hands of any *bonâ fide* holder thereof there is affixed thereto an adhesive stamp effectually obliterated, and purporting and appearing to be duly cancelled, such stamp shall, so far as relates to such holder, be deemed to be duly cancelled, although it may not appear to have been so affixed or cancelled by the proper person"

(*b*) "If at the time when any such bill or note comes into the hands of any *bonâ fide* holder thereof there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for such holder to cancel such stamp as if he were the person by whom it was affixed, and upon his doing so such bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been duly cancelled by the person by whom it was affixed"

4. "But neither of the foregoing provisoes is to relieve any person from any penalty incurred by him for not cancelling any adhesive stamp"

S. 52.—"A bill of exchange or promissory note purporting to be drawn or made out of the United Kingdom is, for the purposes of this Act, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom"

Duties payable on Bills and Notes

	£	s.	d.
Bill of Exchange payable on demand ...	0	0	1
Bill of Exchange of any other kind whatsoever (*except a Bank Note*), and Promissory Note of any kind whatsoever (*except a Bank Note*), drawn or expressed to be payable, or actually paid, or indorsed, or in any manner negotiated in the United Kingdom. Where the amount or value of the money for which the Bill or Note is drawn or made does not exceed £5	0	0	1
Exceeds £5 and does not exceed £10 ...	0	0	2
„ £10 „ „ £25 ...	0	0	3
„ £25 „ „ £50 ...	0	0	6

	£	s.	d.
Exceeds £50 and does not exceed £75 ...	0	0	9
„ £75 „ „ £100 ...	0	1	0
For every £100, and also for any fractional part of £100 of such amount or value ...	0	1	0

S. 55.—"When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from such duly stamped bill, be exempt from duty: and upon proof of the loss or destruction of a duly stamped bill, forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from such lost or destroyed bill, may, although unstamped, be admitted in evidence to prove the contents of such lost or destroyed bill"

Capacity *and* Authority *of Parties*

122.* 1. Capacity to incur liability as a party to a bill is co-extensive with capacity to contract

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations

2. Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto

123.* No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that

1. Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

2. The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm

On the Form *of Bills and Notes*

124.* 1. An inland bill is a bill which is or on the face of it

purports to be (*a*) both drawn and payable within the British Ilands, or (*b*) drawn within the British Ilands upon some person resident therein. Any other bill is a foreign bill

For the purposes of this Act "British Ilands" means any part of the United Kingdom of Great Britain and Ireland, the ilands of Man, Guernsey, Jersey, Alderney, and Sark, and the ilands adjacent to any of them being part of the dominions of Her Majesty

2. Unless the contrary appear on the face of the bill the holder may treat it as an inland bill

125. No particular form of words is necessary for a Bill or Note

2. It may be written in any language and on any material; and in pencil (*a*) as well as in ink

(*a*) *Geary* v. *Physick*, 5 B. & C., 234

126. It is usual, but not necessary, to insert the name of the place where the bill or note is made: if there is no date it will be considered as dated at the time it is made

De la Courtier v. *Bellamy*, 2 Show., 422. *Hague* v. *French*, 3 B. & P., 173. *Giles* v. *Bourne*, 6 M. & S., 73

127. Bills and Notes were formerly specialties under seal; and therefore no consideration was required to be expressed in them: the same principle holds good now that the formality of sealing is dispensed with, and they are in the form of mere simple contracts

White v. *Ledwick*, 4 Doug., 247. *Grant* v. *Da Costa*, 3 M. & S., 351

128.* An instrument which orders any act to be done in addition to the payment of money, is not a bill of exchange

An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional

129.* A bill is not invalid by reason—

(*a*) That it is not dated;

(*b*) That it does not specify the value given, or that any value has been given therefor;

(*c*) That it does not specify the place where it is drawn or the place where it is payable

130. A bill must not be payable on a contingency (*a*)—

The happening of the contingency before action brought does not cure the defect (*b*)

(*a*) *Pearson* v. *Garrett*, 4 Mod., 242. *Beardsley* v. *Baldwin*, 2 Stra., 1151. *Carlos* v. *Fancourt*, 5 T. R., 482. *Roberts* v. *Peake*, Burr., 323. *Leeds* v. *Lancashire*, 2 Camp., 205. *Williamson* v. *Bennett*, 2 Camp., 417. *Hill* v. *Halford*, 2 B. & P., 413. *Hartley* v. *Wilkinson*, 4 Camp., 127. *Clarke* v. *Perceval*, 2 B. & Ad., 661. *Drury* v. *Macaulay*, 16 M. & W., 146. *Alexander* v. *Thomas*, 16 Q. B., 333. *Palmer* v. *Pratt*, 2 Bing., 185. *Worley* v. *Harrison*, 3 A. & E., 669. *Robins* v. *May*, 11 A. & E., 214

(*b*) *Hill* v. *Halford*, 2 B. & P., 413

131.* 1. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty

2. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being

3. Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer

132. 1. A bill drawn payable to ——, or order, is void (*a*)

2. But a *bonâ fide* holder for value may insert his own name in it, and sue the parties to it (*b*)

(*a*) *Rex* v. *Richards*, R. & R. C. C., 193. *Rex* v. *Randall*, R. & R. C. C., 195

(*b*) *Crutchley* v. *Claranee*, 2 M. & S., 190. *Attwood* v. *Griffin*, R. & M., 225. *Crutchley* v. *Mann.*, 8 Taunt., 529

133. If the drawer of a bill inserts the name of a fictitious payee without the acceptor's knowledge, and indorses it in the name of the fictitious payee, the holder cannot sue the acceptor (*a*)

But if the acceptor knew that the payee was fictitious, the holder may sue him on it as payable to bearer (*b*)

(*a*) *Bennett* v. *Farnell*, 1 Camp., 130

(*b*) *Tatlock* v. *Harris*, 3 T. R., 174. *Vere* v. *Lewis*, 3 T. R., 182. *Minet* v. *Gibson*, 3 T. R., 481: affirmed in *Dom. Proc.*, 1 H. Bla., 569

134. The event must certainly happen: though the time when it may happen is uncertain

Colehan v. *Cooke*, Willes, 393. *Roffey* v. *Greenwell*, 10 A. & E., 222. *Andrews* v. *Franklin*, 1 Stra., 24

135. A man may draw a bill upon, or make a note payable to himself, and when indorsed in blank it becomes payable to bearer

Starke v. *Cheesman*, Carth., 508. *Dehers* v. *Harriot*, 1 Show., 163. *Robinson* v. *Bland*, 2 B., 1077. *Richards* v. *Maecy*, 14 M. & W., 484. *Browne* v. *De Winton; Gay* v. *Lander*, 6 C. B., 336. *Wood* v. *Mytton*, 10 Q. B., 805. *Magor* v. *Hammond*, cited in *Harvey* v. *Kay*, 9 B. & C., 364. *Roach* v. *Ostler*, 1 Man. & Ry., 120. *Miller* v. *Thompson*, 3 M. & G., 576

136. A bill, though accepted, is of no force without the drawer's signature, either as a bill or note

Stoessiger v. *S. E. Ry. Co.*, 3 E. & B., 553. *Goldsmid* v. *Hampton*, 5 C. B., N. S., 94. *Maccall* v. *Taylor*, 34 L. J., C. P., 365. *Rex* v. *Hart*, 6 C. & P., 106

137. If an instrument is made in terms so ambiguous that it is doubtful whether it is a bill or note, the holder may treat it as either

Peto v. *Reynolds*, 9 Ex., 410. *Armfield* v. *Allport*, 27 L. J., Ex., 42. *Fielden* v. *Marshall*, 9 C. B., N. S., 606. *Shuttleworth* v. *Stevens*, 1 Camp., 407. *Allan* v. *Mawson*, 4 Camp., 115. *Gray* v. *Milner*, 8 Taunt., 739. *Miller* v. *Thompson*, 3 M. & G., 576

138.* 1. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable

2. A negotiable bill may be payable either to order or to bearer

3. A bill is payable to bearer which is expressed to be so pay-

able, or on which the only or last indorsement is an indorsement in blank

4. A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable

5. Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option

139.* The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*) With interest

(*b*) By stated instalments

(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due

(*d*) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill

1. Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable

2. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof

140.* 1. A bill is payable on demand—

(*a*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b*) In which no time for payment is expressed

2. Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand

141.* A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

1. At a fixed period after date or sight

2. On or at a fixed period after the occurrence of a specified

event which is certain to happen, though the time of happening may be uncertain

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect

142.* Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date

143.* 1. Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be

2. A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday

144.* The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit

145.* The drawer of a bill, and any indorser, may insert therein an express stipulation—

1. Negativing or limiting his own liability to the holder:
2. Waiving as regards himself some or all of the holder's duties

146.* 1. Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a com-

plete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit

2. In order that any such instrument when completed may be enforceable against any person who becomes a party thereto prior to its compeltion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given

147.* 1. Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon ; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability

2. In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted

148.* 1. A bill may be drawn payable to, or to the order of, the drawer : or it may be drawn payable to, or to the order of, the drawee

2. Where, in a bill, drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note

149.* 1. The drawee must be named or otherwise indicated in a bill with reasonable certainty

2. A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange

150.* 1. An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker

2. A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof

3. A note which is, or on the face of it purports to be, both made and payable within the British Ilands is an inland note. Any other note is a foreign note

151.* The maker of a promissory note by making it—

1. Engages that he will pay it according to its tenor ;

2. Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse

152.* 1. Subject to the provisions in this part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes

2. In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order

3. The following provisions as to bills do not apply to notes ; namely, provisions relating to—

(*a*) Presentment for acceptance ;

(*b*) Acceptance ;

(*c*) Acceptance suprà protest ;

(*d*) Bills in a set

4. Where a foreign note is dishonoured, protest thereof is unnecessary

153.* 1. Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable

2. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may he:

(*b*) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed

3. Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved

154.* A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer

155.* 1. A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor

2. Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note

156.* 1. Where a note payable on demand has been indorsed it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged

2. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case

3. Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears

that a reasonable time for presenting it for payment has elapsed since its issue

Liability of Drawer or Indorser

157.* 1. The drawer of a bill by drawing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse

2. The indorser of a bill by indorsing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto

158.* Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course

Rights of the Holder

159.* The rights and powers of the holder of a bill are as follows:—

1. He may sue on the bill in his own name:

2. Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:

3. Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill

Funds in Hands of Drawee

160.* 1. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland

2. In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee

On the Consideration

161. A Consideration is any loss or detriment to the plaintiff sustained at the request or for the sake of the defendant : or any benefit to the defendant moving from the plaintiff

162.* 1. Valuable consideration for a bill may be constituted by—

(*a*) Any consideration sufficient to support a simple contract;

(*b*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time

2. Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time

3. Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien

The debt of a third person is good consideration for which a person may bind himself by bill payable after date

Popplewell v. *Wilson*, 1 Stra., 264. *Coombs* v. *Ingram*, 4 D. & R., 211. *Ridout* v. *Bristow*, 1 C. & J., 231. *Wilders* v. *Stevens*, 15 M.

& W., 208. *Sowerby* v. *Butcher*, 2 C. & M., 368. *Balfour* v. *The Sea, Fire, and Life Insu. Co.*, 3 C. B., N. S., 300

163. But not for a bill or note payable on demand, unless taken in substitution for the other debt

Forth v. *Stanton*, 1 Wms., Saunders, p. 210c., note c. *Croft* v. *Beale*, 11 C. B., 172

164. Cross acceptances for mutual accommodation are respectively considerations for each other

Rolfe v. *Caslon*, 2 H. Bla., 571. *Rose* v. *Sims*, 1 B. & Ad., 521. *Cowley* v. *Dunlop*, 7 T. R., 568. *Buckler* v. *Buttivant*, 3 East., 72. *Cardwell* v. *Martin*, 9 East., 190

165. 1. If the bill or note has been given for an illegal consideration, or has been obtained by fraud, or duress, or lost, or stolen, the defendant may call upon the holder to prove the consideration he gave for it

2. But not otherwise

Mills v. *Barber*, 1 M. & W., 425. *Percival* v. *Frampton*, 2 C. M. & R., 180. *Whitaker* v. *Edmunds*, 1 A. & E., 638. *Jacob* v. *Hurgate*, 1 Moo. & Rob., 445. *Edmonds* v. *Groves*, 2 M. & W., 642. *Smith* v. *Martin*, 9 M. & W., 304. *Fearn* v. *Filica*, 7 M. & G., 513. *Bingham* v. *Stanley*, 2 Q. B., 117

166.* 1. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person

2. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not

167.* A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely—

(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(*b*) That he took the bill in good faith and for value, and

that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it

2. In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud

3. A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder

168.* 1. Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value

2. Every holder of a bill is *primâ facie* deemed to be a holder in due course ; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill

On Presentation *for* Acceptance

169. The holder of an unaccepted bill should present it for acceptance as soon as possible

If the drawee refuses acceptance the preceding parties become liable immediately

If the holder is a mere agent he will be liable for any loss which may occur through his negligence to present

A bill payable at sight or presentation is payable on demand

If a bill is payable at any period after sight there is no right of action against any one until presentment for acceptance

Unless presentment for acceptance is made within reasonable time the holder loses his remedy against the preceding parties

What is reasonable time is a mixed question of law and fact, and depends upon the circumstances of each particular case

The holder may put it into circulation without presenting it

Muilmen v. *D'Eguino*, 2 H. Bla., 565. *Goupy* v. *Harden*, 7 Taunt., 160. *Fry* v. *Hill*, 7 Taunt., 395. *Strakes* v. *Graham*, 4 M. & W., 721. *Mellish* v. *Rawdon*, 9 Bing., 416. *Shute* v. *Robins*, 1 M. & Mal., 133. *Mullick* v. *Radakissen*, 9 Moore, P. C. Ca., 46.

170. Presentment must be made to the drawer or his authorised agent

Cheek v. *Roper*, 5 Esp., 175

171. The drawee is entitled to have reasonable time, usually twenty-four hours, to consider whether he will accept or not. If he detains the bill longer than allowed by mercantile usage, he is held to have accepted it

Ingram v. *Foster*, 2 Smith, 242. *Harvey* v. *Martin*, 1 Camp., 425n

172. If the drawee has changed his residence the holder must use due diligence to find him

Collins v. *Butler*, 2 Stra., 1087. *Bateman* v. *Joseph*, 12 East., 433

173.* 1. Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument

2. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment

3. In no other case is presentment for acceptance necessary in order to render liable any party to the bill

4. Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers

174.* 1. Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance, or negotiate it within a reasonable time

2. If he do not do so, the drawer and all indorsers prior to that holder are discharged

3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case

175.* 1. A bill is duly presented for acceptance which is presented in accordance with the following rules :—

(*a*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue :

(*b*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only :

(*c*) Where the drawee is dead presentment may be made to his personal representative :

(*d*) Where the drawee is bankrupt presentment may be made to him or to his trustee :

(*e*) Where authorised by agreement or usage a presentment through the post office is sufficient :

2. Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a*) Where the drawee is dead or bankrupt, or is a fictitious person, or a person not having capacity to contract by bill :

(*b*) Where, after the exercise of reasonable diligence, such presentment cannot be effected :

(*c*) Where, although the presentment has been irregular, acceptance has been refused on some other ground

3. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment

176.* When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers

177.* (1.) A bill is dishonoured by non-acceptance—

(*a*) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained ; or

(*b*) When presentment for acceptance is excused and the bill is not accepted

2. Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary

Of Acceptance

178. Acceptance is, in general, an engagement to pay the bill when due in money

Clark v. *Cock*, 4 East., 72. *Russell* v. *Phillips*, 14 Q. B., 891

179.* 1. The acceptance of all bills inland (*a*), and foreign (*b*), must be in writing on the bill, signed by the acceptor or some person duly authorised by him

2. The mere signature of the drawee without additional words is sufficient

(*a*) 1 & 2 Geo. (1821), c. 78, c. 2

(*b*) 19 & 20 Vict. (1856) c. 97, s. 6

180. The term "acceptance" includes delivery or notification of the fact of acceptance to the parties interested

Cox v. *Troy*, 5 B. & Ald., 474. *Chapman* v. *Cottrell*, 34 L. J., Ex., 186

181.* It must not express that the drawee will perform his promise by any other means than the payment of money

182.* A bill may be accepted—

1. Before it has been signed by the drawer, or while otherwise incomplete :

2. When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment :

3. When a bill payable after sight is dishonoured by non-

acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance

183. 1. An acceptance once completed, *i.e.*, by writing *and* delivery or notification, is irrevocable (*a*)

2. But the drawee may cancel his signature before delivery or notification if he pleases (*b*)

(*a*) *Clarke* v. *Cock*, 4 East., 57. *Wynne* v. *Raikes*, 5 East., 514. *Powell* v. *Monnier*, 1 Atk., 611. *Mendizabal* v. *Machado*, 3 Moo. & Sc., 841. *Fairlee* v. *Herring*, 3 Bing., 625

(*b*) *Cox* v. *Troy*, 5 B. & Ald., 474. *The Bank of Van Dieman's Land* v. *The Bank of Victoria*, L. R., 3 Pr. C., 526

184.* The acceptor of a bill by accepting it—

1. Engages that he will pay it according to the tenor of his acceptance

2. Is precluded from denying to a holder in due course—

(*a*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill:

(*b*) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement:

(*c*) In the case of a bill payable to the order of a third person the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement

Unless he knew of the forgery at the time of acceptance, and intended the bill to be circulated with a forged indorsement

Smith v. *Chester*, 1 T. R., 655. *Robinson* v. *Yarrow*, 7 Taunt., 455. *Beeman* v. *Duck*, 11 M. & W., 251

185. If the bill is drawn in a *fictitious name*, or is a forgery of a real name, to the knowledge of the acceptor, he undertakes to pay to an indorsement by the same hand

Tatlock v. *Harris*, 3 T. R., 174. *Vere* v. *Lewis*, 3 T. R., 182. *Minet* v. *Gibson*, 1 H. Bla., 569. *Gibson* v. *Hunter*, 2 H. Bla., 187. *Bennett* v. *Farnell*, 1 Camp., 130. *Schultz* v. *Astley*, 2 Bing., N. C., 544. *Taylor* v. *Croher*, 4 Esp., 187. *Bass* v. *Clive*, 4 M. & W., 251. *Phillips* v. *Im Thurm*, L. R., 1 C. P., 463

186. The acceptance of a bill purporting to be indorsed by the payee does not admit the genuineness of the indorsement

Tucker v. *Robarts*, 16 Q. B., 560. *Garland* v. *Jacomb*, L. R., 8 Ex., 216

187. A person who accepts a bill ostensibly as agent for another person, but without his authority, is personally liable

Gurney v. *Evans*, 3 H. & N., 122

188. A bill can only be accepted by the drawee, and not by a stranger; unless the drawee ratifies and adopts the signature as that of his agent: or for the honour of the drawee

Nichols v. *Diamond*, 9 Exch., 154. *Lindus* v. *Bradwell*, 5 C. B., 583. *Polhill* v. *Walter*, 3 B. & Ald., 114. *Eastwood* v. *Bain*, 3 A. & N., 738. *Davis* v. *Clarke*, 6 Q. B., 16. *Jackson* v. *Hudson*, 2 Camp., 447

189. There cannot be two or more separate acceptors to a bill not jointly responsible

But the second acceptance may be held as a guaranty for the first

Jackson v. *Hudson*, 2 Camp., 447

190. An instrument drawn, but not addressed to any one, is yet a valid instrument, if any one accepts it, or it may be inferred who the drawee is intended to be

Gray v. *Milner*, 8 Taunt., 739. *Rex* v. *Hunter*, Russ. & Ry., 511. *Shuttleworth* v. *Stevens*, 1 Camp., 407. *Allan* v. *Mawson*, 4 Camp., 115. *Reg.* v. *Hawkes*, 2 Mood., C. C., 60. *Reg.* v. *Smith*, 2 Mood., C. C., 295

191. If the drawee has once admitted that the acceptance is his writing, he cannot afterwards allege that it is forged (*a*)

If he pays several bills drawn upon him by a person connected with him in business, but who has forged his signature, he is liable to pay other bills drawn upon him in a similar way (*b*)

But if he pays one bill drawn upon him by a person not connected with him in business, who has forged his signature, that will not bind him to pay similar forgeries in future (*c*)

(*a*) *Leach* v. *Buchanan*, 4 Esp., 226. *Brook* v. *Hook*, L. R., 6 Ex., 89

(*b*) *Barber* v. *Gingell*, 3 Esp., 60

(*c*) *Cash* v. *Taylor*, Ll. & Webs., 178. *Morris* v. *Bethell*, L. R., 5 C. P., 47

192.* An acceptance is either *general* or *qualified*

A *general* acceptance is an absolute engagement to pay the bill according to its tenor and effect

A *qualified* acceptance is either *conditional*, *i.e.*, an engagement to pay the bill on a certain condition being fulfilled; or *partial*, that is, *varying* from the tenor of the bill

In particular, an acceptance is qualified which is—

(*a*) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:

(*b*) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:

(*c*) Local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only, and not elsewhere:

(*d*) Qualified as to time:

(*e*) The acceptance of some one or more of the drawees, but not of all

193. 1. The holder of the bill is entitled to have a general acceptance; and if the drawee offers a qualified acceptance, the holder may refuse it; note the bill; and give notice of dishonour to the preceding parties

2. If he intends to receive it he must give notice to the other parties and obtain their consent, or they will be discharged (*a*)

3.* When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto

4. But he must not note or protest the bill, or give general notice of dishonour, as by doing so the acceptor would be discharged (*b*)

5. Whether an acceptance is absolute or conditional is a question of Law

(*a*) *Sebag* v. *Abitbol*, 4 M. & S., 462. *Rowe* v. *Young*, 2 Bligh, 391: see answers of the Judges to question three. *Outhwaite* v. *Luntley*, 4 Camp., 177. *Boehm* v. *Garcias*, 1 Cam., 425n

(*b*) *Sproat* v. *Matthews*, 1 T. R., 182. *Bentinck* v. *Dorrein*, 6 East., 200

194.* A bill domiciled at a particular place is a general acceptance unless made payable there only, and not elsewhere

1 Geo. 4, c. 78. *Siggers* v. *Nichols*, 3 Jur., 341

195.* The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance

On Signing by Procuration

196. It is very common for persons to authorise others to draw, accept, or indorse and negotiate bills for them, and such signing is called—signing *by procuration*

As the agent is the mere hand which performs the duty, persons may sign by procuration who have no capacity in their own right to contract, such as infants, persons attainted, or, in fact, labouring any disqualification

Co. Litt., 52a

197.* A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the limits of his authority

198. No particular form is necessary to convey this authority, either verbal or written. But any one who takes a bill drawn, accepted, or indorsed by procuration, should make inquiry whether or not the authority has been properly followed

Alexander v. *Mackenzie*, 6 C. B., 766. *Attwood* v. *Munnings*, 7 B. & C., 278

199. General authority to transact business does not carry with it powers to negotiate bills: but if the agent gives notice

that he is acting as agent, and the principal afterwards adopts his acts, he will be bound by them

Saunderson v. *Griffiths*, 5 B. & C., 909. *Vere* v. *Ashby*, 10 B. & C., 288. *Wilson* v. *Tummon*, 6 M. & G., 236. *Ancona* v. *Marks*, 7 H. & N., 686

200. Special authorities will be construed strictly: but if an agent has been in the habit of negotiating bills for his principal, or other person connected with him in business, and he has adopted this person's acts, he will be bound by them

Barber v. *Gingell*, 3 Esp., 60. *Llewellyn* v. *Winckworth*, 13 M. & W., 598. *Cash* v. *Taylor*, Ll. & Web., M. C., 178. *Prescott* v. *Flinn*, 9 Bing., 19

201. An agent's authority will be presumed to continue until notice is given of its termination. Such notice as regards strangers must be given in *The Gazette*, and to customers and correspondents by individual communication

202. An agent who wishes to avoid personal liability, must either sign his principal's name only; or expressly state on the face of the instrument that he signs as agent

203. Evidence cannot be received to charge a principal who is not named on the face of the bill or note (*a*): nor to discharge an agent who signs it in his own name (*b*)

(*a*) *Leadbitter* v. *Farrow*, 5 M. & S., 349. *Bult* v. *Morrell*, 12 A. & E., 750. *Edmunds* v. *Bushell*, 35 L. J., Q. B., 91

(*b*) *Higgins* v. *Senior*, 8 M. & W., 834

204. Where an agent, being duly authorised, expressly states on the face of the instrument that he merely signs it by procuration, for a principal, he will not be bound

But if in any case whatever he signs it without authority, he, and he only, will be personally liable; and his representatives as well

Lee v. *Zagury*, 8 Taunt., 114. *Leadbitter* v. *Farrow*, 5 M. & S., 345. *Sowerby* v. *Butcher*; *Alexander* v. *Sizer*, L. R., 4 Ex., 105. *Goupy* v. *Harden*, 7 Taunt., 160. *Lefevre* v. *Lloyd*, 5 Taunt., 749. *Thomas* v. *Bishop*, 2 Stra., 955. *Rew* v. *Pettet*, 1 A. & E., 196.

Mare v. *Charles*, 5 E. & B,, 978. *Lewis* v. *Nicholson*, 18 Q. B., 509. *Randall* v. *Tummen*, 18 C. B., 786. *Collen* v. *Wright*, 7 E. & B., 301. *Kelner* v. *Baxter*, L. R., 2 C. P., 174. *Scott* v. *Lord Ebury*, L. R., 2 C. P., 255. *Polhill* v. *Walter*, 3 B. & Ad., 114

205. In ordinary trading partnerships each member of the firm may bind it by bills

But he must use the name of the firm, or one which it is sometimes known by

Dormant or secret partners, and also ostensible partners, or persons who hold themselves out as partners, are also bound

Pinckney v. *Hall*, 1 Salk., 126. *Lane* v. *Williams*, 2 Vern., 277. *Wells* v. *Masterman*, 2 Esp., 731. *Harrison* v. *Jackson*, 7 T. R., 207. *Swan* v. *Steele*, 7 East., 210. *Ridley* v. *Taylor*, 13 East., 175. *Lewis* v. *Reilly*, 1 Q. B., 349. *Stephens* v. *Reynolds*, 5 H. & N., 513. *Mason* v. *Rumsey*, 1 Camp., 384. *Nicholson* v. *Ricketts*, 29 L. J., Q. B., 55. *South Carolina Bank* v. *Case*, 8 B. & C., 427. *Ex parte Bolitho*, Buck., 100. *Thicknesse* v. *Bromilow*, 2 C. & J., 425. *Lloyd* v. *Ashby*, 2 B. & Ad., 23. *Vere* v. *Ashby*, 10 B. & C., 288. *Gurney* v. *Evans*, 3 H. & N., 122. *Williams* v. *Johnson*, 1 B. & C., 146. *Forbes* v. *Marshall*, 11 Ex., 166. *Maclae* v. *Sutherland*, 3 E. & B., 1. *Brown* v. *Kidger*, 3 H. & N., 853

206. If he does not sign the name of the firm it will not be bound

Faith v. *Richmond*, 11 A. & E., 339. *Kirk* v. *Blurton*, 9 M. & W., 284. *Siffin* v. *Walker*, 2 Camp., 308. *Ex parte Emly*, 1 Rose, 61. *Emly* v. *Lye*, 15 East., 7

207. But a member of a non-trading partnership cannot bind it by bills : unless authority may be inferred

Dickinson v. *Valpy*, 10 B. & C., 128. *Brown* v. *Byers*, 16 M. & W., 252. *Thicknesse* v. *Bromilow*, 2 Cr. & J., 425. *Greenslade* v. *Dewar*, 7 B. & C., 635. *Hedley* v. *Bainbridge*, 3 Q. B., 316. *Levy* v. *Pyne*, C. & Mar., 453. *Forster* v. *Mackreth*, L. R., 2 Ex., 69. *Smith* v. *Craven*, Cr. & J., 500

208. Creditors carrying on a business to satisfy their debts out of the business are not partners

Wheatcroft v. *Hickman*, 9 C. B., N. S., 47

209. 1. A person, however, who takes a bill or note from one

partner, knowing, or having reasonable cause to suspect, that it is contrary to the consent of the other partners, cannot sue them (*a*)

2. And the indorsee of such bill taken in fraud of the partnership, must prove that he innocently gave value for it (*b*)

(*a*) *Heilbut* v. *Neville*, L. R., 5 C. P., 478. *Barber* v. *Backhouse*, Peake, 86. *Jones* v. *Yates*, 9 B. & C., 532. *Jacaud* v. *French*, 12 East., 317. *Laveson* v. *Lane*, 13 C. B., N. S., 278. *Ex parte Bonbonus*, 8 Ves., 540. *Green* v. *Deakin*, 2 Stark., 347. *Ex parte Goulding*, 2 Gl. & J., 118. *Frankland* v. *McGusty*, 1 Knapp., P. C., 274. *Lord Galway* v. *Mathew*, 10 East., 264. *Sherriff* v. *Wilkes*, 1 East., 48

(*b*) *Arden* v. *Sharpe*, 2 Esp., 524. *Wells* v. *Masterman*, 2 Esp., 731. *Hogg* v. *Skeen*, 34 L. J., C. P., 153. *Ridley* v. *Taylor*, 13 East., 175. *Sutton* v. *Gregory*, 2 Peake, 150

210. If the same person, a partner in two firms of the same name, negotiates a bill in the common name of the firms, the holder may sue either

Baker v. *Charlton*, Peake 80. *Swan* v. *Steele*, 7 East., 210

211. Dissolution of partnership should be notified in *The Gazette*, which will avail against persons who have had no dealings with the firm: but all customers and correspondents should receive individual notice of dissolution; otherwise ex-partners may still bind the firm to parties who have had no notice of the fact

Heath v. *Sansom*, 4 B. & Ald., 172. *Booth* v. *Quin*, 7 Price, 193. *Godfrey* v. *Turnbull*, 1 Esp., 371. *Graham* v. *Hope*, Peake, 154. *Garham* v. *Thompson*, Peake, 42. *Newsome* v. *Coles*, 2 Camp., 617. *Farrar* v. *Deflinne*, 1 C. & K., 580. *Williams* v. *Keates*, 2 Stark., 290

212. The change of the names on the cheques of a firm of bankers is a sufficient notice to their customers of a change in the firm

Barfoot v. *Goodhall*, 3 Camp., 147

213. After a dissolution of partnership the members are separate individuals, and, therefore, all must join in signing a bill (*a*)

Unless they give authority to one of their number to sign for them (*b*)

(*a*) *Abel* v. *Sutton*, 3 Esp., 108. *Kilgorn* v. *Finlayson*, 1 H., Bla., 155

(*b*) *Smith* v. *Winter*, 4 M. & W., 454

On the **Alteration** *of a Bill or Note*

214. A bill or note may be altered by the consent of the parties before it is issued, *i.e.*, passed away for value

Kennerley v. *Nash*, 1 Stark., 452. *Downes* v. *Richardson*, 5 B. & Ald., 674. *Tarleton* v. *Shingler*, 7 C. B., 812. *Marson* v. *Petit*, 1 Camp., 82n

215. After a bill or note has once been issued it cannot be altered in any material part, *i.e.*, so as to alter the responsibility of the parties

Except only to correct a mistake, and to fulfil the original intention of the parties

Master v. *Miller*, 4 T. R., 320; affirmed 2 H. Bla., 141. *Bowman* v. *Nicholl*, 5 T. R., 537. *Kershaw* v. *Cox*, 3 Esp., 246. *Trapp* v. *Spearman*, 2 Esp., 57. *Cardwell* v. *Martin*, 9 East., 190. *Knill* v. *Williams*, 10 East., 431. *Cowie* v. *Halsall*, 4 B. & Ald., 197. *Tidmarsh* v. *Grover*, 1 M. & S., 735. *Cock* v. *Coxwell*, 2 C. M. & R., 291. *Catton* v. *Simpson*, 8 A. & E., 136. *Burchfield* v. *Moore*, 3 E. & B., 683. *Macintosh* v. *Haydon*, Ry. & Mo., 362. *Desbrowe* v. *Wetherby*, M. & Rob., 438. *Taylor* v. *Moseley*, 6 C. & P., 273. *Hamelin* v. *Bruck*, 9 Q. B., 306. *Rodge* v. *Pringle*, 29 L. J., Ex., 115. *Outhwaithe* v. *Luntley*, 4 Camp., 179. *Watton* v. *Hastings*, 4 Camp., 223. *Bathe* v. *Taylor*, 15 East., 412. *Brutt* v. *Pickard*, Ry. & M., 37. *Jacob* v. *Hart*, 6 M. & S., 142. *Ex parte White*, 2 Dea. & Ch., 334. *Byrom* v. *Thompson*, 11 A. & E., 31. *Cariss* v. *Tattershall*, 2 M. & G., 890. *Mason* v. *Bradley*, 11 M. & W., 590. *Hirchman* v. *Budd*, L. R. & Ex., 171. *Warrington* v. *Early*, 23 L. J., Q. B., 47

216.* 1. Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers

Provided that—

Where a bill has been materially altered, but the alteration is

not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor

2. In particular, the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent

217. An alteration which is not material, *i.e.*, which does not vary the responsibility of the parties will not vitiate it

Trapp v. *Spearman*, 3 East., 57. *Walter* v. *Cubley*, 2 C. & M., 151. *Aldous* v. *Cornwell*, L. R., 3 Q. B., 573

218. An accommodation bill may be altered by the parties to it before it is issued, *i.e.*, before it is passed away for value

Downes v. *Richardson*, 5 B. & Ald., 674. *Atwood* v. *Griffin*, 2 C. & P., 368. *Tarleton* v. *Shingler*, 7 C. B., 812

219. An alteration by the drawer or payee of a bill, or the payee of a note, does not extinguish the debt (*a*): unless the bill or note was taken in satisfaction of the debt (*b*)

(*a*) *Sutton* v. *Toomer*, 7 B. & C., 416. *Atkinson* v. *Hawdon*, 2 A. & E., 628. *Sloman* v. *Cox*, 1 C. M. & R., 471

(*b*) *Macdowall* v. *Boyd*, 17 L. J., Q. B., 295

220. An alteration by the indorsee not only makes the instrument void as against all parties, but also extinguishes the debt due from the indorser to the indorsee

Alderson v. *Langdale*, 3 B. & Ad., 660

221. The transferee of an altered bill has only the rights of the transferor

Burchfield v. *Moore*, 3 E. & B., 683

222. If a person gives a renewal for a bill which has been vitiated by an alteration, he is not liable on the renewal, if he was not aware of the alteration at the time he gave the renewed bill

Bell v. *Gardiner*, 4 M. & G., 11

223. The maker of a promissory note is discharged from his liability by any alteration of the note, wherever the altered instrument, if genuine, would operate differently from the original instrument, even though it should be to his advantage: as, for instance, if names are added to a joint and several note besides those originally intended to be on it

Clerk v. *Blackstock*, Holt's N. P. C., 474. *Gardner* v. *Walsh*, 5 E. & B., 83

224. A person who sues upon an altered bill will be required to prove the circumstances of the alteration; and if he cannot, it is a question for the jury

Johnson v. *Duke of Marlborough*, 2 Stark., 313. *Henman* v. *Dickinson*, 5 Bing., 183. *Knight* v. *Clements*, 8 A. & E., 215. *Bishop* v. *Chambre*, 1 M. & Mal., 116. *Disbrowe* v. *Wetherby*, 6 C. & P., 758. *Taylor* v. *Moseley*, 6 C. & P., 273

Negotiation *of Bills*

225.* 1. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill

2. A bill payable to bearer is negotiated by delivery

3. A bill payable to order is negotiated by the indorsement of the holder completed by delivery

4. Where the holder of a bill payable to his order transfers it for value, without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor

5. Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability

226.* All bills and notes are now transferable or negotiable without being made payable to the payee, or "bearer," or "order"

36 & 37 Vict. (1873), c. 66, s. 26, § 6, 11

If, however, the words "or order" are inserted, they can only be transferred by the payee's indorsement

Signature *and delivery* constitute indorsement

§ 5, 1, *supra*.

227.* 1. Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery"

A transferor by delivery is not liable on the instrument

3. A transferor by delivery, who negotiates a bill, thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless

228.* An indorsement, in order to operate as a negotiation, must comply with the following conditions, namely :—

1. It must be written on the bill itself, and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient

An indorsement written on an allonge, or on a "copy" of a bill, issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself

2. It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill

3. Where a bill is payable to the order of two or more payees or indorsees, who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others

4. Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature

5. Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved

229. An indorsement may either be in blank ; or *special*, or *in full*

An indorsement in blank is when the indorser simply writes his name, *usually*, but not *necessarily* (1), on the back of the

instrument, and delivers it to the indorsee. Such an indorsement makes the bill or note payable to bearer (*a*)

The delivery may be either actual or constructive, as where the indorser notifies to the indorsee that he has indorsed the bill to him, but yet retains it in his own possession

(*a*) *Peacock* v. *Rhodes*, 2 Doug., 633. *Francis* v. *Mott*, cited in preceding case. *Ord* v. *Portal*, 3 Camp., 239. *Low* v. *Copestake*, 3 C. & P., 300. *Machell* v. *Kinnear*, 1 Stark., 499

(1) *Rex* v. *Bigg*, 1 Stra., 18. *Ex parte Yates*, 27 L. J., Bkcy., 9

230. A *special* indorsement, or an indorsement in full, is where the instrument is indorsed by name to some specific person

The special indorsee can then only transfer it by indorsement: and this he may do, whether it is merely indorsed to him, or to him "or order"

The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement

Moore v. *Manning*, Com., 311. *Acheson* v. *Fountain*, 1 Stra., 557. *Edie* v. *East India Co.*, 2 Burr., 1216. *Cunliffe* v. *Whitehead*, 5 Scott, 31. *Gay* v. *Lander*, 6 C. B., 336

231. A bill once indorsed in blank, and afterwards indorsed in full, is payable to bearer as regards all the parties before the special indorser: but as against the special indorser, title must be made through his indorsee

Smith v. *Clarke*, 1 Peake, N. P. C., 295. *Leonard* v. *Wilson*, 2 Cr. & M., 589. *Walker* v. *Macdonald*, 2 Ex., 527

232.* When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person

233.* 1. An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof; as, for example, if a bill be indorsed "Pay D. only," or "Pay D., for the account of X.," or "Pay D., or order for collection"

2. A restrictive indorsement gives the indorsee the right to

receive payment of the bill, and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorser unless it expressly authorise him to do so

3. Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights, and subject to the same liabilities, as the first indorsee under the restrictive indorsement

234. There may be any number of indorsements on a bill or note; and if there is not room for them on the original instrument, an additional piece of paper may be added to it—called an *allonge*—which requires no stamp

235. A mis-spelling does not necessarily avoid an indorsement

Leonard v. *Wilson*, 2 Cr. & M., 589

236. Every indorser is in the nature of a new drawer

Penny v. *Innes*, 1 C. M. & R., 441. *Allen* v. *Walker*, 2 M. & W. 317

237. He contracts that if the drawee does not at maturity pay the bill, he will, on receiving due notice of dishonour, pay the holder the sum which the drawee ought to have paid, together with such damages as the law allows as an indemnity

Suse v. *Pompe*, 8 C. B., N. S., 538

238. A person who accepts or indorses a blank bill or note is liable for any amount the stamp will cover

Russell v. *Langstaffe*, 2 Doug., 514. *Usher* v. *Dauncy*, 4 Camp., 97. *Pasmore* v. *North*, 13 East., 517. *Snaith* v. *Mingay*, 1 M. & S., 87. *Cruchley* v. *Clarance*, 2 M. & S., 90. *Collis* v. *Emet*, 1 H. Bla., 313. *Schultz* v. *Astley*, 2 Bing., N. C., 544

239. An indorser admits the signature and capacity of every prior party (*a*), but he does not warrant them

(*a*) *Lambert* v. *Pack*, 1 Salk., 127. *Williams* v. *Seagrave*, 2 Barnard., 82. *Crichlow* v. *Parry*, 2 Camp., 182. *Free* v. *Hawkins*, Holt., N. P. C., 550. *Macgregor* v. *Rhodes*, 25 L. J., Q. B., 318

(*b*) *East India Co.* v. *Tritton*, 3 B. & C., 280

240. If two persons, not partners, are the payees of a bill or note, both must indorse

Carvick v. *Vickery*, 2 Doug., 653n

241.* Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid, whether the condition has been fulfilled or not

242. A bill may be indorsed conditionally, and if, after such conditional acceptance, the drawee accepts it and pays it without the condition being fulfilled, he is liable to pay it again to the payee

Robertson v. *Kensington*, 4 Taunt., 30

243.* Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable

Unless there are special circumstances which would prevent them from suing him

Wilders v. *Stevens*, 15 M. & W., 208. *Morris* v. *Walker*, 15 Q. B., 589. *Boulcott* v. *Woodcott*, 16 M. & W., 584. *Williams* v. *Clarke*, 16 M. & W., 834

244. An indorser may exempt himself from liability by adding the words "*sans recours*," or "without recourse to me," or similar words

He may also exempt himself from personal liability to his immediate indorsee by an agreement, written or oral

But this would not affect a holder for value without notice

Pike v. *Street*, 1 M. & M., 226. *Thompson* v. *Clubley*, 1 M. & W., 212. *Castrigue* v. *Buttigeig*, 10 Moore, P. C. Ca., 94

245. Striking out an indorsement intentionally discharges the indorser (*a*) : but not if done by mistake (*b*)

(*a*) *Fairclough* v. *Pavia*, 9 Ex., 690

(*b*) *Wilkinson* v. *Johnson*, 3 B. & C., 428

246. A trust may be expressed on the face of the bill, or in the indorsement

Evans v. *Cramlington*, Carth., 5. *Snee* v. *Prescott*, 1 Atk., 247. *Archer* v. *Bank of England*, 2 Doug., 637. *Edie* v. *East India Co.*, 2 Burr., 1227. *Treuttel* v. *Barandon*, 8 Taunt., 100. *Sigourney* v. *Lloyd*, 8 B. & C., 622; affirmed, 5 Bing., 525

247. The transferee of a bill held in trust cannot retain it against the true owner (*a*): and if the acceptor is obliged to pay it, he may recover the amount from the depositary (*b*)

(*a*) *Goggerly* v. *Cuthbert*, 2 N. R., 170. *Evans* v. *Kymer*, 1 B. & Ad., 528. *Robson* v. *Rolls*, 1 M. & Rob., 239

(*b*) *Bleadon* v. *Charles*, 7 Bing., 246

248. If a person holds a bill or note merely as the agent of another person, he has only the title of his principal

Solomons v. *Bank of England*, 13 East., 135

249. 1. If an indorsee gives value for a bill which has been refused acceptance, without knowledge of the fact, he has the usual remedies against the parties to it (*a*)

2. But if he takes it with knowledge that it has been refused acceptance, he can only charge his immediate indorser (*b*)

(*a*) *O'Keefe* v. *Dunn*, 6 Taunt., 305; affi., 5 M. & S., 282. *Whitehead* v. *Walker*, 9 M. & W., 506: 10 M. & W., 696

(*b*) *Crossley* v. *Ham*, 13 East., 498. *Bartlett* v. *Benson*, 16 M. & W., 696

250.* 1. Where a bill is negotiable in its origin it continues to be negotiable until it has been (*a*) restrictively indorsed or (*b*) discharged by payment, or otherwise

2. Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had

3. A bill payable on demand is deemed to be overdue, within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact

4. Except where an indorsement bears date after the maturity

of the bill, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue

5. Where a bill which is not overdue has been dishonoured, any person who takes it, with notice of the dishonour, takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course

Lost Instruments

251.* Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so

252. In any action or proceeding upon a bill, the Court, or a Judge, may order that the loss of the instrument shall not be set up, provided an indemnity be given, to the satisfaction of the Court or Judge, against the claims of any other person upon the instrument in question

On the Property in Instruments Lost or Stolen

253. If any negotiable bill, note, obligation, or security for money be lost or stolen, the finder or thief cannot retain it against the true owner, or recover against the parties to it

Anonymous. 1 Ld. Raym., 738. *Greenstreet* v. *Carr*, 1 Camp., 551. *Burn* v. *Morris*, 3 L. J., N. S., Ex., 193.

254. But if such finder or thief, or if a person holding such security as **Agent** (1) for the owner of it, pass it away or pledge (2) it for value, and the transferee is ignorant of the fraud, such innocent holder, or pawnee for value, may retain it against the true owner, and has a right of action against all the parties to it

Bank Notes. *Anon.*, 1 Ld. Raym., 738. *Miller* v. *Race*, 1 Burr., 452. *Lowndes* v. *Anderson*, 13 East., 130. *Beckwith* v. *Correll*

2 C. & P., 261; 11 Moo., 335. *Snow* v. *Sadler*, 11 Moo., 506. *Raphael* v. *Bank of England*, 17 C. B., 161

Cheques. *Grant* v. *Vaughan*, 3 Burr., 1516. *Carlon* v. *Ireland*, 5 El. & Bl., 765. *Rothschild* v. *Corney*, 9 B. & C., 388. *Watson* v. *Russell*, 3 B. & S., 34; 5 B. & S., 968

Bills of Exchange. *Peacock* v. *Rhodes*, 2 Doug., 633. *Lawson* v. *Weston*, 4 Esp., 56. *Crook* v. *Jadis*, 6 C. & P., 191; 3 Nev. & Man., 257. *Backhouse* v. *Harrison*, 3 Nev. & Man., 188. *Goodman* v. *Harvey*, 4 A. & E., 870. *Uther* v. *Rich.*, 10 A. & E., 784. *May* v. *Chapman*, 16 M. & W., 355. *Thiedeman* v. *Goldschmidt*, 1 D. G. F. & G., 4

Navy Bills. *Goldsmid* v. *Gaden*, 1 B. & P., 649

Exchequer Bills. *Wookey* v. *Pole*, 4 B. & Ald., 1

Foreign Transferable Bonds. *Gorgier* v. *Mieville*, 8 B. & C., 45.

(1) *Bank of Bengal* v. *Macleod*; *Id.* v. *Fagan*, Moo., P. C., 35, 61

(2) *Collins* v. *Martin*, 2 Esp., 520; 1 B. & P., 648. *Jones* v. *Peppercorne*, 1 John., 430

Scrip for Foreign Bonds. *Goodwin* v. *Robarts*, L. R., 10 Exch., 357

255. But if the transferee knows at the time of taking the instrument that it has been lost or stolen (1), or if he *knows* that the person he takes it from has no authority to sell or pledge it (2), or if it be taken for an illegal consideration (3), he cannot retain it, or recover on it, even though he has given full value for it

(1) *Burn* v. *Morris*, 8 L. J. N. S., Ex., 193

(2) *Maclish* v. *Ekins*, Say., 73. *Treuttel* v. *Barandon*, 1 Moo., 543. *Foster* v. *Pearson*, and *Stephens* v. *Foster*, 1 C. M. & R., 849. *Fancourt* v. *Bull*, 1 Bing., N. C., 681. *Willis* v. *Bank of England*, 4 A. & E., 21. *Whistler* v. *Forster*, 14 C. B., N. S., 248

(3) *Wynne* v. *Callander*, 1 Russ., 293

256. But if the instrument be not negotiable, or if the transferor held it as **Trustee**, or if he acquired or transmitted it by means of a forgery, the innocent holder, or pawnee for value, has only the equities of the transferor, and cannot retain it against the true owner, or recover on it

Manningford v. *Toleman*, 1 Coll., C. C., 235. *Moore* v. *Jervis*, 2 Coll., C. C., 60. *Lang* v. *Smith*, 7 Bing., 284. *Partridge* v. *Bank of England*, 9 C. B., 408. *Smith* v. *Mercer*, 6 Taunt., 76. *Hall* v. *Fuller*, 5 B. & C., 750. *Robarts* v. *Tucker*, 16 Q. B., 560. *Esdaile* v. *Lanauze*, 1 Y. & C., 394. *Johnson* v. *Wilde*, 3 Bing, N. C., 225. *Whistler* v. *Forster*, 14 C. B., N. S., 248

On **Presentment** *for* **Payment**

257.* Subject to the provisions of this Act, a bill must be duly presented for payment. If it be not so presented, the drawer and indorsers shall be discharged

A bill is duly presented for payment which is presented in accordance with the following rules :—

1. Where the bill is not payable on demand, presentment must be made on the day it falls due

2. Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case

3. Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found

4. A bill is presented at the proper place :—

(*a*) Where a place of payment is specified in the bill and the bill is there presented

(*b*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented

(*c*) Where no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known

(*d*) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence

5. Where a bill is presented at the proper place, and after the exercise of reasonable diligence, no person authorised to pay or

refuse payment can be found there, no further presentment to the drawee or acceptor is required

6. Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all

7. Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found

8. Where authorised by agreement or usage a presentment through the post office is sufficient

258. Demand must be made even though the drawee or acceptor is bankrupt (*a*); or even if he declares in the presence of the drawer that he will not pay the bill (*b*)

(*a*) *Russell* v. *Langstaffe*, 2 Doug., 514. *Nicholson* v. *Gouthit*, 2 H. Bla., 610. *Ex parte Johnstone*, 1 Mont., & Ayr., 622. *Esdaile* v. *Sowerby*, 11 East., 114

(*b*) *Ex parte Bignold*, 1 Deac., 728

259. Presentment for payment is not necessary to charge the guarantor of a bill or note

Hitchcock v. *Humfrey*, 5 M. & G., 559. *Walton* v. *Mascall*, 13 M. & W., 453. *Warrington* v. *Furbor*, 8 East., 242

260. Usance is a period which in early times was appointed as the *usual* time between different countries

When usance is a month, half usance is always fifteen days

Usance between London and—

1. Aleppo, Altona, Amsterdam, Antwerp, Brabant, Bruges, Flanders, Geneva, Germany, Holland, the Netherlands, Lisle, Paris, and Rouen—is one month

2. Spain and Portugal—two months

3. Italy—three months

261. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable

2. Presentment for payment is necessary in order to render the indorser of a note liable

3. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice

262. If the acceptor of a Bill or the maker of a Note changes his residence, he is bound to leave funds on the premises to meet the bill

Brown v. *Macdermot*, 5 Esp., 265. *Saunderson* v. *Judge*, 2 H., Bl., 510. *Baxter* v. *Jones*, 1 M. & G., 83. *Hine* v. *Attely*, 4 B. & Ad., 624

263.* 1. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence

2. Presentment for payment is dispensed with—

(*a*) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment

(*b*) Where the drawee is a fictitious person

(*c*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented

(*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented

(*e*) By waiver of presentment, express or implied

264. Promissory notes, payable on demand, are often intended to be continuing securities: and whether any unnecessary

delay has taken place in presenting them for payment, must be determined, in each case, by the Court and Jury

Brooks v. *Mitchell*, 9 M. & W., 15. *Chartered Mercantile Bank of India, &c.*, v. *Dickson*, L. R., 3 P.C., 574

On the **Extinguishment** *of Bills and Notes*

265. The liability of parties to Bills and Notes may be discharged and extinguished by **Waiver** or **Discharge**, by **Release**, and by **Payment** and **Satisfaction, Judgment, Execution**, and **Merger**

Of Waiver

266.* 1. When the holder of a Bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the Bill is discharged

The renunciation must be in writing, unless the Bill is delivered up to the acceptor

2. The liabilities of any party to a Bill may in like manner be renounced by the holder before, at, or after its maturity ; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation

267. If the waiver be not for the whole amount and unconditional there must be a consideration

Parker v. *Leigh*, 2 Stark., 228. *Owen* v. *Pizey*, 11 W. R. C. P., 21

Of Release

268. A Release under seal may be given which requires no consideration

269. 1. The Release of a Debt by one of the several joint Creditors discharges the Debtor from his liability to all the Creditors (*a*)

2. But if the release is given in fraud of the other Creditors the Courts will set it aside (*b*)

3. If a Creditor gives a release of the Debt to one of the several joint Debtors, the Debt is extinguised and all the joint Debtors are discharged (*c*)

4. A covenant not to sue one joint Debtor is a release to him; but it does not discharge the other joint Debtors (*d*)

5. Where deeds are drawn releasing one of several joint Debtors, but expressly reserving the remedies against the others, the Courts invariably hold them to be mere covenants not to sue the Debtor, but not a release of the debt (*d*)

(*a*) *Ruddock's Case*, 6 Co., Rep., 25a. *Jacomb* v. *Harwood*, 2 Ves., sen., 267. *Barker* v. *Richardson*, 1 Y. & Jer., 362. *Webb* v. *Hewitt*, L. R., 7 Eq., 28

(*b*) *Payne* v. *Rogers*, Doug., 407. *Hickey* v. *Bart*, 7 Taunt., 49. *Jones* v. *Herbert*, 7 Taunt., 42. *Legh* v. *Legh*, 1 B. & P., 447. *Innell* v. *Newman*, 4 B. & Ald., 419. *Manning* v. *Cox*, 7 J. B., Moore, 617. *Sargent* v. *Wedlake*, 11 C. B., 372. *Rawstone* v. *Gandell*, 15 M. & W., 305. *Barker* v. *Richardson*, 1 Y. & J., 362. *Ex parte Morrison*, 33 L. J., Bkcy., 47. *De Pothonier* v. *De Matias*, E. B. & E., 461

(*c*) Y. B., 21 Edw., 4, 81, c. 33. Co. Litt., 232a. *Fowell* v. *Forrest*, 2 Wms. Saund., 48. *Clayton v. Kynaston*, 2 Salk., 574. *Wankford* v. *Wankford*, 1 Salk., 300. *Cheetham* v. *Ward*, 1 B & P., 630. *Evans* v. *Brembridge*, 2 K. & J., 174. *Nicholson* v. *Revill*, 4 A. & E., 675. *Price* v. *Barker*, 4 E. & B., 760

(*d*) *Lacy* v. *Kinaston*, 1 Ld. Raym., 690. *Fitzgerald* v. *Trant*, 11 Mod., 254. *Dean* v. *Newhall*, 8 Tr., 168. *Hutton* v. *Eyre*, 6 Taunt., 289. *Solly* v. *Forbes*, 2 Bro. & B., 38. *Thompson* v. *Lack*, 3 C. B., 240. *Price* v. *Barker*, 4 E. & B., 750. *Walmesly* v. *Cooper*, 11 A. & E., 216. *Kearsley* v. *Cole*, 16 M. & W., 128. *Henderson* v. *Stobart*, 5 Ex., 99. *Willis* v. *De Castro*, 4 C. B., N.S., 216. *Owen* v. *Homan*, 4 H. L. Ca., 1037. *Bateson* v. *Gosling*, L. R., 7 C. P., 9. *Green* v. *Winn*, L. R., 7 C. P., 28: aff., 4 Ch. Ap., 204. *Keys* v. *Elkins*, 5 B. & S., 240. *Andrew* v. *Macklin*, 6 B. & S., 201

270. 1. A covenant not to sue for a limited time is not a release and cannot be pleaded in bar (*a*)

Unless it is expressly provided in the deed that it may be pleaded in bar (*b*)

(*a*) *Ayliff* v. *Scrimshiere*, 1 Show., 46. *Deux* v. *Jefferies*, Cro. Eliz., 352. *Smith* v. *Mapleback*, 1 T. R., 446. *Burgh* v. *Preston*, 8 T. R., 486. *Thimbleby* v. *Barron*, 3 M. & W., 210

(*b*) *Walker* v. *Neville*, 34 L. J., Ex. 73

271. A release after the bill is due discharges all the parties, prior to the releasor

2. But a release before the bill is due, though good between the parties, does not invalidate the claims of an indorsee for value without notice of the release

Dod v. *Edwards*, 2 C. & P., 602

272. A release given to the drawee before acceptance is void

Drage v. *Netter*, 1 Ld. Raym., 65. *Ashton* v. *Freestun*, 2 Scott., N. R., 173. *Hartley* v. *Manton*, 5 Q. B., 247

273. A creditor who releases a debt cannot retain any securities he holds for the debt

Shepherd's Touchstone (Preston), 342. *Cowper* v. *Green*, 7 M. & W., 633

Of Payment, Discharge, and Satisfaction

274. 1. The words Payment, Discharge, and Satisfaction are not synonymous

Payment, *pacatio*, is anything which is taken as an equivalent in exchange for something else, and which appeases or estops a right of action for a time, but it is not necessarily a final discharge, or a *satisfaction*

Thus a Bill or Note taken "for or on account of" a debt; for goods sold and delivered; or a Bill taken in renewal of a previous one; is payment for the time being, because the vendor has agreed to take it as an equivalent for the goods or Bill; but it is not a satisfaction until the Bill is paid. If the second Bill is not given and accepted expressly in satisfaction of the former bill, the holder may sue for interest on the first

Louvriere v. *Laubray*, 10 Mod., 37. *Holdipp* v. *Otway*, 2 Wms. Saund., 103 b. n. (e). *Kearslake* v. *Morgan*, 5 T. R., 513. *Tapley* v. *Martens*, 8 T. R., 451. *Plimley* v. *Westley*, 2 Bing., N. C., 249. *Thorne* v. *Smith*, 10 C. B., 659. *Belshaw* v. *Bush*, 11 C. B., 191. *Jones* v. *Broadhurst*, 9 C. B., 173. *Stedman* v. *Gooch*, 1 Esp., N. P. C., 3. *Lewis* v. *Lyster*, 4 Dowl., 377. *Bottomley* v. *Nuttall*, 5 C. B., N. S., 122. *Ford* v. *Beech*, 11 Q. B., 854. *Maillard* v. *Duke of Argyll*, 6 Scott, N. R., 938. *Mercer* v. *Cheese*, 5 Scott, N. R., 664. *Griffiths* v. *Owen*, 13 M. & W., 58. *James* v. *Williams*, 13 M. & W., 828. *Price* v. *Price*, 16 M. & W., 232. *Kendrick* v.

Lomax, 2 C. & J., 405. *Simon* v. *Lloyd*, 2 C. M. & R., 187. *Wilkinson* v. *Casey*, 7 T. R., 713. *Ex parte Barclay*, 7 Ves., 597. *Bishop* v. *Rowe*, 3 M. & S., 362. *Ditton* v. *Rimmer*, 1 Bing., 100. *London and Birmingham and S. Staffordshire Bank, in re*, 34 L. J., Ch., 418. *Lumley* v. *Musgrave*, 5 Scott, 230. *Lumley* v. *Hudson*, 5 Scott, 238

275. If, however, the security is dishonoured at maturity, and is in the possession of the plaintiff, the original debt remains in force, and may be sued for

Puckford v. *Maxwell*, 6 T. R., 52. *Owenson* v. *Morse*, 7 T. R., 64. *Swinyard* v. *Bowes*, 5 M. & S., 62. *Van Wart* v. *Woolley*, 3 B. & C., 439. *Burdon* v. *Hatton*, 4 Bing., 454. *Sayer* v. *Wagstaff*, 5 Beav., 423. *Maillard* v. *Duke of Argyll*, 6 Scott, N. R., 938. *Valpey* v. *Oaksey*, 16 Q. B., 941

276. The word "Payment" does not mean a final and absolute extinguishment of the debt

"Satisfaction" is the only legal term which means a final and absolute extinguishment of the debt (*a*)

If a creditor takes a bill or note in "satisfaction" and discharge of a debt (*b*): or if he takes a bill or note "for or on account of" a debt, and commits laches by not getting it paid in due course (*c*): it is a satisfaction and extinguishment of the debt

If he has once consented to accept a bill in "satisfaction" of a debt, he cannot revoke his consent (*d*)

(*a*) *Maillard* v. *Duke of Argyll*, 6 Scott, N. R., 938. *Kemp* v. *Watt*, 15 M. & W., 672. *Macdowall* v. *Boyd*, 17 L. J., Q. B., 295. *Bottomley* v. *Nuttall*, 5 C. B., N. S., 122

(*b*) *Sard* v. *Rhodes*, 1 M. & W., 153. *Lewis* v. *Lyster*, 5 Dowl., 377

(*c*) 9 & 3 Anne (1704), c. 9, s. 7

(*d*) *Hardman* v. *Bellhouse*, 9 M. & W., 600

277. Whether a security is given "for and on account of" or in "satisfaction" of a debt is a question for the Jury

Goldshede v. *Cottrell*, 2 M. & W., 20. *Sibtree* v. *Tripp*, 45 M. & W., 23

278.* 1. A bill is discharged by payment in due course by or on behalf of the drawee or acceptor

"Payment in due course" means payment made at or after

the maturity of the bill to the holder thereof in good faith, and without notice that his title to the bill is defective

2. Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but—

(*a*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill

(*b*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill

3. Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged

279. Paying a security before it is due does not discharge the debtor

Da Silva v. *Fuller*

280. Payment should be made to the holder, or his agent: but it is sufficient if the funds reach him

Field v. *Carr*, 5 Bing., 13

281. The party paying a bill has the right to demand it (*a*): receipted (*b*): which imports *primâ facie* that it has been paid by the acceptor (*c*)

(*a*) *Hansard* v. *Robinson*, 7 B. & C., 90. *Powell* v. *Roach*, 6 Esp., 76. *Alexander* v. *Strong*, 9 M. & W., 733. *Cornes* v. *Taylor*, 10 Ex., 441

(*b*) 43 Geo. III. (1803), c. 126, s. 5

(*c*) *Pfiel* v. *Vanbatenberg*, 2 Camp., 431. *Scholes* v. *Walsby*, Peake, 27

282. If a person accepts and pays a bill under a mistake of facts, he may recover it back

Kendall v. *Wood*, L. R., 6 Ex., 243

283. Payment of a bill or note to a person who holds through a forged indorsement does not discharge the debtor

East India Co. v. *Tritton*, 3 B. & C., 280. *Smith* v. *Mercer*, 6 Taunt., 76. *Robarts* v. *Tucker*, 13 Q. B., 575

284. 1. If a creditor having the option of receiving cash from a principal chooses to take a security, that is a "satisfaction" of his debt (*a*)

But not from an agent (*b*)

(*a*) *Strong* v. *Hart*, 6 B. & C., 160. *Smith* v. *Ferrand*, 7 B. & C., 19. *Anderson* v. *Hillies*, 12 C. B., 499. *Robinson* v. *Read*, 9 B. & C., 494

(*b*) *Marsh* v. *Pedder*, 4 Camp., 257. *Everett* v. *Collins*, 2 Camp., 515

285. A creditor may transfer his debt against another person to a creditor of his own, by the consent of the common debtor; and if the arrangement is consented to by all the parties, it is a "satisfaction" of the first creditor's debt

Bracton Lib. iii., c. 2, s. 13. *Tatlock* v. *Harris*, 3 T. R., 174. *Fairlie* v. *Denton*, 8 B. & C., 400. *Crowfoot* v. *Gurney*, 2 M. & Sc., 482. *Hodgson* v. *Anderson*, 3 B. & C., 842

286. Payment may be demanded at any reasonable hour of the day on which the bill or note is due, and if refused, notice of dishonour may be given

But the acceptor or maker has the whole day to pay, and if he pays the instrument on the day, the notice is void

Hartley v. *Case*, 4 B. & C., 339

287. Payment of an accommodation bill by the drawer extinguishes the bill

Lazarus v. *Cowie*, 2 Q. B., 459. *Cook* v. *Lister*, 32 L. J., C. P. 121

288. 1. Payment by the debtor of a smaller sum is not satisfaction of a larger sum due (*a*)

2. But payment by a stranger may be (*b*)

3. Or a negotiable security given by a debtor (*c*)

(*a*) *Pinnel's Case*, 5 Co. Rep., 117. *Adams* v. *Tapling*, 4 Mod., 88. *Fletcher* v. *Sutton*, 5 East., 230. *Watters* v. *Smith*, 2 B. & Ad., 889. *Beaumont* v. *Greathead*, 2 C. B., 294. *Smith* v. *Page*, 15 M. & W., 683. *Perry* v. *Attwood*, 6 E. & B., 691

(*b*) *Welby* v. *Drake*, 1 C. & P., 557. *Henderson* v. *Stobart*, 5 Ex., 99

(*c*) *Sibtree* v. *Tripp*, 15 M. & W., 23

289. An agreement not to sue for a limited time does not suspend the right of action on a bill or note

Ford v. *Beech*, 11 Q. B., 842. *Moss* v. *Hall*, 5 Ex., 50. *Webb* v. *Spicer*, 13 Q. B., 894.: aff. in Dom. Proc., as *Salmon* v. *Webb*, 3 H. L., Ca., 510

290. A set off, or a part payment in cash and part set off, is now payment of a bill or note

36 & 37 Vict. (1873), c. 66, s. 25, § 11

291. Payment by a stranger, or any other party, to a bill is not payment by the acceptor; unless made for or on his account, and ratified by him (*a*)

A banker who has re-discounted a bill accepted by his customer, payable at his bank, may pay the bill either as indorser or as agent for the acceptor, and take time to consider in which capacity he does so (*b*)

(*a*) *Deacon* v. *Stodhart*, 2 M. & G., 317. *Jones* v. *Broadhurst*, 9 C. B., 173. *Randall* v. *Moon*, 12 C. B., 261. *Goodwin* v. *Cremer*, 22 L. J., Q. B., 30. *Kemp* v. *Balls*, 10 Ex., 607. *Agra and Masterman's Bank*, v. *Leighton*, L. R., 2 Ex., 56

(*b*) *Pollard* v. *Ogden*, 3 T. & B., 459

292. Taking a co-extensive security of a higher nature in lieu of a bill or note, "merges" or extinguishes it: but unless it is strictly co-extensive it will not

Ansell v. *Baker*, 15 Q. B., 20. *Bell* v. *Banks*, 3 M. & G., 358. *King* v. *Hoare*, 13 M. & W., 494. *Sharpe* v. *Gibbs*, 5 C. B., N. S., 527

293. Judgment recovered on a bill or note extinguishes the original debt of the defendant, and all parties jointly liable with him

But without satisfaction it does not extinguish the plaintiff's claim against other parties not jointly liable with the defendant

Nor between a prior party to whom the plaintiff after judgment returns the bill, and the defendant

A judgment recovered against one joint and several debtor is no bar to an action against another joint and several debtor

Claxton v. *Swift*, 2 Show., 441. *King* v. *Hoare*, 13 M. & W., 494. *Tarleton* v. *Allhusen*, 2 A. & E., 32

294. Discharging a party from execution is a satisfaction of the debt from all parties who are sureties for him, but not of those parties who are not

Hayling v. *Nuthall*, 2 W. Bla., 1235. *English* v. *Darley*, 2 B. & P., 61. *Clark* v. *Clement*, 6 T. R., 525. *Mayhew* v. *Crickett*, 2 Swans, 190. *Michael* v. *Myers*, 6 M. & G., 702

295.* When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith, and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee, or any subsequent indorsement, was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority

296.* When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged

297.* 1. Where a bill is intentionally cancelled by the owner or his agent, and the cancellation is apparent thereon, the bill is discharged

2. In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged

3. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill, or any signature thereon, appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority

Upon Notice *of* Dishonour

298.* 1. A bill is dishonoured by non-payment (*a*), when it is duly presented for payment and payment is refused, or cannot be obtained, or (*b*), when presentment is excused and the bill is overdue and unpaid

2. Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder

299.* Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance, or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged: Provided that—

1. Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, shall not be prejudiced by the omission

2. Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted

300.* Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules:—

1. The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill

2. Notice of dishonour may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not

3. Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders, and all prior indorsers who have a right of recourse against the party to whom it is given

4. Where notice is given by or on behalf of an indorser entitled to give notice, as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given

5. The notice may be given in writing, or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment

6. The return of a dishonoured bill to the drawer, or an

indorser, is, in point of form, deemed a sufficient notice of dishonour

7. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is, in fact, misled thereby

8. Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf

9. Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found

10. Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee

11. Where there are two or more drawers or indorsers, who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice from the other

12. The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter

In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless—

(*a*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill

(*b*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter

13. Where a bill, when dishonoured, is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder

14. Where a party to a bill receives due notice of dishonour,

he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour

15. Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office

301.* 1. Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence

2. Notice of dishonour is dispensed with—

(*a*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged

(*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice

(*c*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person; (2) where the drawee is a fictitious person, or a person not having capacity to contract; (3) where the drawer is the person to whom the bill is presented for payment; (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill; (5) where the drawer has countermanded payment

(*d*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person, or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill; (2) where the indorser is the person to whom the bill is presented for payment; (3) where the bill was accepted or made for his accommodation

302.* The notice should describe the instrument, so that it may not be confounded with any other

But minor mistakes will not invalidate the notice, so long as the bill or note can be identified

Messenger v. *Southey*, 1 Scott, N. R., 180. *Stockman* v. *Parr*, 11 M. & R., 809. *Mellersh* v. *Rippen*, 7 Ex., 578. *Bromage* v. *Vaughan*, 9 Q.

B., 608. *Harpham* v. *Child*, 1 F. & F., 652. *Beauchamp* v. *Cash*, 1 D. & Ry., N. P., 3

303.* Notice of dishonour need not state on whose behalf payment is applied for, nor where the bill is lying; mistakes on these points will not invalidate it (*a*): nor the omission of a signature, so long as it appears that the notice came from the proper quarter (*b*)

(*a*) *Woodthorpe* v. *Lawes*, 2 M. & W., 109. *Housego* v. *Cowne*, 2, M. & W., 348. *Harrison* v. *Ruscoe*, 15 M. & W., 231. *Rowlands* v. *Springjett*, 14 M. & W., 7

(*b*) *Maxwell* v. *Brain*, 10 Jur., N. S., 777

304.* The letter should be addressed particularly to the person's residence: and not generally to a large town: unless the drawer has dated it so

Walter v. *Haynes*, R. & M., 142. *Mann* v. *Moors*, 1 R. & M., 249. *Clarke* v. *Sharpe*, 3 M. & W., 166. *Siggers* v. *Browne*, 1 M. & Rob., 520. *Burmester* v. *Barron*, 17 Q. B., 828. *Hewitt* v. *Thompson*, 1 M. & Rob., 543

305.* Some evidence must be given that the notice was actually posted

Skilbeck v. *Garbett*, 7 Q. B., 846. *Hetherington* v. *Kemp.*, 4 Camp., 194. *Hawkes* v. *Salter*, 4 Bing., 715. *Langdon* v. *Hulls*, 5 Esp., 156. *Stocken* v. *Collin*, 7 M. & W., 515

306.* It may be sent by special messenger; and, under peculiar circumstances, the expenses of the messenger have been allowed

Dobree v. *Eastwood*, 3 C. & P., 250. *Bancroft* v. *Hall*, Holt, N. P., 476. *Pearson* v. *Crallan*, 2 Smith, 404. *Housego* v. *Cowne*, 2 M. & W., 348

307.* The notice should be sent to the party's residence, or place of business: unless otherwise directed

Skelton v. *Braithwaite*, 8 M. & W., 252. *Cross* v. *Smith*, 1 M. & S., 545. *Bancroft* v. *Hall*, Holt, N. P., 476. *Allen* v. *Edmundson*, 2 Ex., 719. *Housego* v. *Cowne*, 2 M. & W., 348. *Cromwell* v. *Hynson*, 2 Esp., 511. *Stedman* v. *Gooch*, 1 Esp., 4

308. A stranger (*a*): or a party discharged by *laches* (*b*): cannot give notice

(*a*) *Stewart* v. *Kennett*, 2 Camp., 177. *East* v. *Smith*, 16 L. J., Q. B., 292

(*b*) *Harrison* v. *Ruscoe*, 15 M. & W., 231

309. Notice may be given by the holder or any party to all the preceding parties

Fisher v. *Kieran*, 4 Camp., 87

310. 1. If the parties live in the same town notice must be sent so as to be received on the day following dishonour: unless the party sending it is unable to ascertain the address of the other parties in time (*a*)

2. If the parties live in different towns notice must be posted so as to go on the day after dishonour (*b*)

(*a*) *Smith* v. *Mullett*, 2 Camp., 208. *Jameson* v. *Swinton*, 2 Taunt., 224. *Williams* v. *Smith*, 2 B. & Ald., 500. *Fowler* v. *Hendon*, 4 Tyrw., 1002. *Hilton* v. *Fairclough*, 2 Camp., 633. *Darbishire* v. *Parker*, 6 East., 3. *Poole* v. *Dicas*, 1 Scott, 600. *Edmonds* v. *Cates*, 2 Jur., 183. *Bateman* v. *Joseph*, 2 Camp., 461. *Gladwell* v. *Turner*, L. R., 5 Ex., 59

(*b*) *Williams* v. *Smith*, 2 B. & Ad., 496. *Geill* v. *Jeremy*, M. & Mal., 61. *Hawkes* v. *Salter*, 4 Bing., 715. *Wright* v. *Shawcross*, 2 B. & Ald., 501n. *Miers* v. *Brown*, 11 M. & W., 372

311. Notice may be given on the day of dishonour

Burbridge v. *Manners*, 3 Camp., 193. *Ex parte Moline*, 19 Ves., 216. *Hine* v. *Allely*, 4 B. & Ad., 624

312. 1. If the holder gives notice to all parties, he must do so within the time limited to give notice to his immediate indorser

2. Each indorser is entitled to notice and to a day to transmit it to the indorser (*a*)

3. If any indorsee fails to give notice to his indorser all the prior parties are discharged: unless the holder has preserved his remedy against them by giving him notice as above (*b*)

(*a*) *Rowe* v. *Tipper*, 13 C. B., 249. *Hilton* v. *Shepherd*, 6 East, 14n. *Smith* v. *Mullett*, 2 Camp., 208. *Marsh* v. *Maxwell*, 2 Camp., 210. *Jameson* v. *Swinson*, 2 Taunt. 224. *Turner* v. *Leach*, 4 B. & Ald., 451

(*b*) *Marsh* v. *Maxwell*, 2 Camp., 209. *Hilton* v. *Shepherd*, 6 East, 14n. *Smith* v. *Mullett*, 2 Camp., 208

313. A banker who holds a bill for collection is, for the purpose of notice, a distinct holder, and has a day to give notice to his customer; and the customer has a day to give notice to the other parties

Langdale v. *Trimmer*. 15 East., 291. *Bray* v. *Hadwen*, 5 M. & S., 68. *Frith* v. *Thrush*, 8 B. & C., 387. *Scott* v. *Lifford*, 9 East., 347. *Haynes* v. *Birks*, 3 B. & P., 599

314. Where a bill passes through several branches of the same bank, each branch is a separate bank for giving notice

Corlett v. *Jones*: *Clode* v. *Bailey*, 12 M. & W., 51. *Woodland* v. *Fear*, 7 E. & B., 519

315. Notice to an agent for this purpose is sufficient ; but not to a person's general solicitor

Cross v. *Smith*, 1 M. & S., 545

316. A creditor who holds a bill as collateral security is bound to present and give notice

Peacock v. *Pursell*, 14 C. B., N. S., 728

317. A person who guarantees a bill or note, is not entitled to notice of dishonour unless he incurs special damage by such want of notice

Warrington v. *Furbor*, 8 East., 242. *Philips* v. *Astlings*, 2 Taunt., 206. *Holbrow* v. *Wilkins*, 1 B. & C., 10. *Van Wart* v. *Woolley*, 3 B. & C., 439. *Walton* v. *Mascall*, 13 M. & W., 72. *Hitchcock* v. *Humfrey*, 5 M. & G., 559. *Murray* v. *King*, 5 B. & Ald., 165

318. The death or bankruptcy of the drawer or acceptor does not excuse want of notice

Russell v. *Langstaff*, 2 Doug., 514. *Esdaile* v. *Sowerby*, 11 East, 114. *Boultbee* v. *Stubbs*, 18 Ves., 21. *Housego* v. *Cowne*, 2 M. & W., 348. *Ex parte Moline*, 19 Ves., 216. *Rhode* v. *Proctor*, 4 B. & C., 517. *Ex parte Johnson*, 3 D. & Ch., 433. *Ex parte Chapple*, 3 Deac., 218. *Nicholson* v. *Gouthit*, 2 H. Bla., 609. *Lafitte* v. *Slatter*, 6 Bing., 623

319. 1. If any party to a bill or note, with a knowledge that *laches* has been committed, and that he is legally free, expressly promises to pay it entirely or partially, such promise is binding (*a*)

2. But not if he makes such promise without such knowledge (*b*)

(*a*) *Vaughan* v. *Fuller*, 2 Stra., 1246. *Hopley* v. *Dufrene*, 15 East., 275. *Lundie* v. *Robinson*, 7 East, 231. *Haddock* v. *Bury*, 7 East, 236. *Hodge* v. *Fillis*, 3 Camp., 463. *Anson* v. *Bailey*, Bull., N. P., 276. *Wilks* v. *Jacks*, Peake, 202. *Horford* v. *Wilson*, 1 Taunt., 12. *Gibbon* v. *Coggan*, 2 Camp., 181. *Potter* v. *Payworth*, 13 East, 417. *Wood* v. *Brown*, 1

Stark., 217. *Hopes* v. *Alda*, 6 East, 16n. *Rogers* v. *Stephens*, 2 T. R., 713. *Dixon* v. *Elliott*, 5 C. P., 437. *Stevens* v. *Lynch*, 12 East, 38. *Taylor* v. *Jones*, 2 Camp., 105. *Fletcher* v. *Froggatt*, 2 C. P., 569. *Gunson* v. *Metz*, 1 B. & C., 193. *Rabey* v. *Gilbert*, 6 H. & N., 536. *Norris* v. *Solomonson*, 4 Scott, 257

(*b*) *Goodall* v. *Dolley*, 1 T. R., 712. *Blesard* v. *Hirst*, 5 Burr., 2670

320. A party who is entitled to receive notice of dishonour and does not, is discharged from all liability, either on the note or the consideration

Bridges v. *Berry*, 3 Taunt., 130. *Soward* v. *Palmer*, 8 Taunt., 277

321. A drawer who has no funds in the hands of the drawee, or has previously instructed him not to pay, is not entitled to notice of dishonour

Dennis v *Morrice*, 3 Esp., 158. *Hill* v. *Heap*, D. & R., N. P. C., 59. *Brett* v *Levett*, 13 East, 214

322. Notice of dishonour may be waived by agreement of the parties

Phipson v. *Kneller*, 4 Camp., 285. *Hill* v. *Heap*, D. & R., N. P. C., 57

323. 1. If the drawer of a bill, or the payee of a note, has no funds in the hands of the drawee, or maker, he is not entitled to notice of dishonour (*a*)

2. But if he had any reasonable expectation that the bill or note would be paid by the drawee, or maker, he is entitled to notice (*b*)

3. An indorser is entitled to notice in all cases (*c*)

(*a*) *Bickerdike* v. *Bollman*, 1 T. R., 406. *De Berdet* v. *Atkinson*, 2 H. Bla., 336. *Legge* v. *Thorpe*, 12 East, 176. *Staples* v. *O'Kines*, 1 Esp., 332. *Corney* v. *Mendez des Aster*, 1 Esp., 301. *Callot* v. *Haigh*, 3 Camp., 281. *Claridge* v. *Dalton*, 4 M. & S., 226. *Walwyn* v. *St. Quentin*, 1 B. & P., 652. *Thomas* v. *Fenton*, 2 B. & C., 68. *Fitzgerald* v. *Williams*, 6 Bing., N. C., 68. *Terry* v. *Parker*, 6 A. & E., 502. *Kemble* v. *Mills*, 1 M. & G., 757. *Carew* v. *Duckworth*, L. R., 4 Ex., 313

(*b*) *Orr* v. *Maginnis*, 7 East, 359. *Blackan* v. *Doren*, 2 Camp., 503. *Hammond* v. *Dufrene*, 3 Camp., 145. *Robson* v. *Gibson*, 3 Camp., 334. *Thackray* v. *Blackett*, 3 Camp., 164. *Rucker* v. *Hiller*, 16 East, 43. *Spooner* v. *Gardiner*, 1 R. & M., 48. *Ex parte Heath*, 3 V. & Bea., 240. *Lafitte* v. *Slatter*, 6 Bing., 623. *Claridge* v. *Dalton*, 4 M. & S., 226. *Cory* v *Scott*, 3 B. & Ald., 619. *Norton* v. *Pickering*, 8 B. & C., 610

(*c*) *Nicholson* v. *Gouthit*, 2 H. Bla., 610. *Esdaile* v. *Sowerby*, 11 East, 114. *Wilkes* v. *Jacks*, Peake, N. P. C., 202. *Smith* v. *Becket*, 13 East, 187. *Brown* v. *Maffey*, 15 East, 216. *Carter* v. *Flower*, 16 M. & W., 749

324. If the drawer of a bill makes it payable at his own house, it is presumed to be an accommodation bill, and he is not entitled to notice of dishonour

Sharp v. *Bailey*, 9 B. & C., 44

325. Notice need not be given to a transferor of the instrument, without indorsement

Unless the instrument was taken for and on account of a pre-existing debt, which is not a sale of the bill: if, therefore, the bill is dishonoured, his liability revives, and he is entitled to notice

And allowance for time for giving him notice will be given for transmitting notice to prior parties

Van Wart v. *Woolley*, 3 B. & C., 439. *Swinyard* v. *Bowes*, 5 M. & S., 62

326. When parties are jointly liable on a bill, notice to one is notice to all

Porthouse v. *Parker*, 1 Camp., 83

327. The owner must, in all cases, give notice of dishonour in reasonable time

But delay in giving notice may be excused if he is ignorant of the addresses of the preceding parties: or other circumstances

But he must use all diligence to discover them

Whether he has used due diligence or not is, in all cases, a question for the jury

Bateman v. *Joseph*, 12 East, 433. *Browning* v. *Kinnear*, Gow, 81. *Baldwin* v. *Richardson*, 1 B. & C., 245. *Siggers* v. *Browne*, 1. M. &. Rob., 520. *Hewitt* v *Thompson*, 1 M. & Rob., 543. *Chapcott* v. *Curlewis*, 2 M. & Rob., 484. *Beveridge* v. *Burgis*, 3 Camp., 262. *Frith* v. *Thrush*, 8 B. & C., 387. *Dixon* v. *Johnson*, 1 Jur., N. S., 70. *Allen v. Edmundson*, 2 Ex., 719. *Sturgess* v. *Derrick*, Wight., 76

328.* 1. Where an inland bill has been dishonoured, it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser

1. Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not

been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof, in case of dishonour, is unnecessary

3. A bill which has been protested for non-acceptance may be subsequently protested for non-payment

4. Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting

5. Where the acceptor of a bill becomes bankrupt, or insolvent, or suspends payment before it matures, the holder may cause the bill to be protested, for better security against the drawer and indorsers

6. A bill must be protested at the place where it is dishonoured: Provided that—

(*a*) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned, and on the day of its return, if received during business hours, and if not received during business hours, then not later than the next business day:

(*b*) When a bill, drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary

7. A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a*) The person at whose request the bill is protested:

(*b*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found

8. Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest must be made on a copy, or written particulars thereof

9. Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the

control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence

Measure of Damages of a Dishonoured Bill

329.* Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :

1. The holder may recover from any party liable on the bill, and the drawer, who has been compelled to pay the bill, may recover from the acceptor, and an indorser, who has been compelled to pay the bill, may recover from the acceptor, or from the drawer, or from a prior indorser—

(*a*) The amount of the bill:

(*b*) Interest thereon, from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case :

(*c*) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest

2. In the case of a bill which has been dishonoured abroad, in lieu of the above damages the holder may recover from the drawer or an indorser, and the drawer, or an indorser who has been compelled to pay the bill, may recover from any party liable to him, the amount of the re-exchange, with interest thereon, until the time of payment

3. Where, by this Act, interest may be recovered as damages, such interest may, if justice require it, be withheld, wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper

Acceptance and Payment supra protest, or for Honour

330. Protest for non-acceptance and non-payment is in complete disuse for inland bills, but it is necessary for foreign bills; but not for foreign promissory notes which are not intended for general circulation throughout the world

331.* 1. Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with consent of the holder, intervene and accept the bill *supra protest*, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

2. A bill may be accepted for honour for part only of the sum for which it is drawn

3. An acceptance for honour *supra protest* in order to be valid must—

(*a*) Be written on the bill, and indicate that it is an acceptance for honour:

(*b*) Be signed by the acceptor for honour

The acceptance may be in this form—"Accepted *supra protest* in honour of A. B."

4. Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer

5. Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour

The drawee may refuse to accept it generally: but he may accept it *supra protest* for the honour of any party to it

A bill which has been accepted *supra protest* for the honour of one party may be accepted *supra protest* by another person for the honour of another party to it

The holder is not bound to take an acceptance for honour

Mitford v. *Walcott*, 1 Ld. Raym., 575

The holder at maturity must present the bill to the drawee, who may in the meantime have received funds to pay it

If the drawee refuses payment the holder must then have the bill protested for non-payment, and it should then be presented to the acceptor for honour

332*. 1. The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts

2. The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted

333.* 1. Where a dishonoured bill has been accepted for honour *supra protest*, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need

2. Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity ; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him

3. Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment

4. When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him

334.* 1. Where a bill has been protested for non-payment, any person may intervene and pay it *supra protest* for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn

2. Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference

3. Payment for honour *supra protest*, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it

4. The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays

5. Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both

the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party

6. The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages

7. Where the holder of a bill refuses to receive payment *supra protest* he shall lose his right of recourse against any party who would have been discharged by such payment

335. The acceptor *supra protest* is bound by the same admissions as bind the party for whose honour he accepts

Phillips v. *Im Thurm*, L. R., 1 C. P., 463

336. The acceptor *supra protest* acquires all the rights of the party *from* whom he receives the bill; except that he discharges all the parties after the one for whose honour he takes it up, and he cannot indorse it over

Ex parte Wackerbath, 5 Ves., 574. *Ex parte Swan*, L. R., 6 Eq., 344

337. Payment for the honour of any party puts the person in the place of an indorsee from that party: he may, therefore, either send notice of dishonour to all parties himself, or he may send it to the party for whom he pays, and that party may send notice in due course

Goodall v. *Polhill*, 1 C. B., 233

Form of **Protest** *which may be used when the Services of a Notary cannot be obtained*

338. Know all men that I, *A. B.* [householder], of in the county of , in the United Kingdom, at the request of *C. D.*, there being no Notary Public available, did on the day of , 188 , at demand payment [*or* acceptance] of the Bill of Exchange hereunder written, from *E. F.*, to which demand he made answer [state answer, if any,]

wherefore I now, in the presence of *G. H.* and *J. K.*, do protest the said Bill of Exchange

(Signed) *A. B.*
G. H. } Witnesses
J. K. }

N.B.—The Bill itself should be annexed, or a copy of the Bill, and all that is written thereon should be underwritten

On the Order of Liability of the Parties to a Bill or Note

339. The parties on a Bill are never, and the parties on a Note are very frequently not, liable in an equal degree

In a Bill the acceptor, and in a Note the maker, is the principal debtor, liable always and in any case to the holder; the drawee of the bill or the payee of the note, and the indorsers in either case, are only sureties, liable only to pay on certain conditions: and a release of the debt to the principal is in all cases a discharge to the sureties

Each party in succession is a principal debtor to the holder, and the subsequent parties are his sureties

Thus the acceptor or maker is the principal debtor to the holder; and the drawer, or payee, and the indorsers are his sureties

Between the holder and the drawee or payee and subsequent indorsers, the drawee or payee is the principal debtor, and the indorsers are his sureties

So the first indorser is a principal debtor to the holder, and the subsequent indorsers are his sureties; and so on in succession

Where the payee is a different person from the drawer he stands in the position of first indorsee of a bill payable to drawer's order

Claridge v. *Dalton*, 4 M. & S., 226

340. A discharge to any party is a discharge to all subsequent parties, because they are merely his sureties: but a discharge to a surety is no discharge to a principal

Smith v. *Knox*, 3 Esp., 46. *Claridge* v. *Dalton*, 4 M. & S., 226.
English v. *Darley*, 3 Esp., 49. *Hall* v. *Cole*, 4 A. & E., 577.

341. If the holder of a bill has notice that it is an accommodation bill and given without value to the drawer he must consider the drawer as his principal debtor, and the acceptor as his surety

Davies v. *Stainbank*, 6 De G. M. & G., 679. *Bailey* v. *Edwards*, 4 B. & S., 671

342. "Every person who being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt, or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or the performance of the duty; and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor in any action or other proceeding at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty: and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: provided always that no co-surety, co-contractor, or co-debtor shall be entitled to receive from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable"

19 & 20 Vict. (1856), c. 97., s. 5

343. In a joint and several note one party is frequently the principal and the others the sureties

Evidence may be given that the holder has possession of the instrument with this knowledge: and therefore he must deal with the parties as principal and sureties

Pooley v. *Harradine*, 7 E. & B., 431. *Taylor* v. *Burgess*, 5 H. & N., 1. *Mutual Loan Fund Asso.* v. *Sudlow*, 28 L. J., C. P., 108.

Rayner v. *Fussey*, 28 L. J., Ex., 132. *Greenough* v. *McClelland*, 30 L. J., Q. B., 15. *Oriental Financial Co.* v. *Overend, Gurney & Co.*, L. R., 7 Ch. Ap., 142

344. A legal agreement founded upon a good consideration to give the principal debtor time to pay, or taking a new bill from him in lieu of the former one, without the consent of all the sureties, will discharge them

Unless the agreement contains a stipulation that the holder shall, on default, have judgment at as early a period as if he had sued him

(*a*) *Moss* v. *Hall*, 5 Exch. 46. *Gould* v. *Robson*, 8 East., 576. *Pooley* v. *Harradine*, 7 E. & B., 431. *Taylor* v. *Burgess*, 5 H. & N., 1. *Michael* v. *Myers*, 6 M. & G., 702

(*b*) *Kennard* v. *Knott*, 4 M. & G., 474. *Hall* v. *Cole*, 4 A. & E., 577. *Price* v. *Edmunds*, 10 B. & C., 578. *Hulme* v. *Collins*, 2 Sim., 12

345. But a mere forbearance to sue; or a promise not to sue; or an offer to give time not acted upon; is no discharge to the sureties, because it is a *nudum pactum* revocable at will

Philpot v. *Briant*, 4 Bing., 717. *Bell* v. *Banks*, 3 Scott, N. R., 497. *Hewet* v. *Goodrick*, 2 C. & P., 468. *Badnall* v. *Samuel*, 3 Price, 521. *Walwyn* v. *St. Quentin*, 1 B. & P., 652

346. So, if the creditor takes a new bill, or other security, as a mere collateral security, and in addition to and not in lieu or substitution of the old one, the sureties are not discharged

Pring v. *Clarkson*, 1 B. & C., 14. *Twopenny* v. *Young*, 3 B. & C., 208. *Bedford* v. *Deakin*, 2 B. & Ald., 210. *Bell* v. *Banks*, 3 M. & G., 258

347. If the acceptor or any party is discharged by operation of law, as by the Bankrupt Act, it does not discharge the sureties

Browne v. *Carr*, 7 Bing., 508. *Langdale* v. *Parry*, 2 D. & R., 337. *Nadin* v. *Battie*, 5 East., 147

348. So, if the creditor expressly agrees with the principal debtor that the sureties shall not be discharged, they are not

349. If the creditor agrees with the principal debtor to give time to the surety, the surety is discharged

Oriental Financial Co. v. *Overend, Gurney & Co.*, L. R., 17 Ch., Ap. 142

On Foreign Bills, and Bills drawn in Sets, Parts, or Copies

350.* 1. Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill

2. Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if the said parts were separate bills

3. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him

4. The acceptance may be written on any part, and it must be written on one part only

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill

5. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof

6. Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment, or otherwise, the whole bill is discharged

351. Every transferor ought to deliver over to his transferee all the parts in his possession: but if a subsequent transferee takes one part from his transferor without demanding the remaining parts, he cannot sue an indorser prior to his own who has not got them

Pinard v. *Klockman*, 3 B. & S., 388

352. If the drawee pays one part of the bill with a forged indorsement, he is still liable to pay the real holder of another part

Cheap v. *Harley*, 3 T. R., 127

353. If a foreign bill is refused acceptance or payment, it is necessary, in order to charge the drawer, to have it protested (*a*)

But a protest is not necessary on a foreign promissory note (*b*)

(*a*) *Borough* v. *Perkins*, 2 Ld. Raym., 993. *Rogers* v. *Stephens*, 2 T. R., 713. *Gale* v. *Walsh*, 5 T. R., 329. *Orr* v. *Maginnis*, 7 East., 359. *Vandewall* v. *Tyrrell*, M. & Mal., 87. *Geralopulo* v. *Wieler*, 10 C. B., 690

(*b*) *Bonar* v. *Mitchell*, 5 Ex., 415

Conflict of Laws

354.* Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows :

1. The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made

Provided that—

(*a*) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue :

(*b*) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom

2. Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made

Provided that where an inland bill is indorsed in a foreign country, the indorsement shall, as regards the payer, be interpreted according to the law of the United Kingdom

3. The duties of the holder with respect to presentment for acceptance or payment, and the necessity for or sufficiency of a protest, or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured

4. Where a bill is drawn out of, but payable, in the United Kingdom, and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable

5. Where a bill is drawn in one country, and is payable in another, the due date thereof is determined according to the law of the place where it is payable

Supplementary

355.* A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not

356.* 1. Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority

2. In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal

357.* Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded

"Non-business days," for the purposes of this Act, mean—

(*a*) Sunday, Good Friday, Christmas Day:

(*b*) A bank holiday, under the Bank Holidays Act, 1871, or Acts amending it:

(*c*) A day appointed by Royal Proclamation as a public fast or thanksgiving day:

Any other day is a business day

358.* For the purposes of this Act, where a bill or note is required to be protested within a specified time, or before some

further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time, or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting

359.* Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall, in all respects, operate as if it were a formal protest of the bill

The form given in Schedule 1 to this Act may be used with necessary modifications, and, if used, shall be sufficient

360.* The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend

361.* The enactments mentioned in the second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that Schedule mentioned

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest

362.* 1 The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto, notwithstanding anything in this Act contained

2. The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques

3. Nothing in this Act, or in any repeal affected thereby, shall affect—

(*a*) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue:

(*b*) The provisions of the Companies' Act, 1862, or Acts

amending it, or any Act relating to Joint Stock Banks, or Companies

(*c*) The provisions of any Act relating to or confirming the privileges of the Bank of England, or the Bank of Ireland, respectively

(*d*) The validity of any usage relating to dividend warrants, or the indorsements thereof

363.* Nothing in this Act, or in any repeal effected thereby, shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence

364.* Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act

365.* In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenour of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution, as the Court or Judge before whom the cause is depending may require

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sexennial prescription

On the Forgery of Bills and Notes

366. Forgery is defined to be the making, altering, or misapplying any writing with intent to defraud

Forging bills or notes, or any part of them, as well as uttering them, knowing them to be forged, are each felonies, punishable by penal servitude for life, or for any term not less than five (1)

years—or by imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement

24 & 25 Vict. (1861), c. 98, s. 22
(1) 27 & 28 Vict. (1864), c. 47, s. 2

367. If several persons make different parts of the instrument, they are each chargeable with forging the entire instrument, though they may be ignorant of each other's proceedings

Rex v. *Bingley*, R. & R., C. C., 446. *Rex* v. *Kirkwood*, 1 Mood., C. C., 304. *Rex* v. *Dade*, 1 Mood., C. C., 307

368. The offence of forgery is complete without any publication or uttering

Elliott's Case, 1 Leach, C. C., 175. *Crocker's Case*, R. & R., C. C., 97

369. Altering the date of a Bill of Exchange after acceptance (*a*): altering the place where a note is made payable (*b*): or altering the sum for which a bill or note is made payable (*c*), are forgeries

(*a*) *Master* v. *Miller*, 4 T. R., 320. *Rex* v. *Atkinson*, 7 C. & P., 699
(*b*) *Rex* v. *Treble*, 2 Taunt., 328
(*c*) *Rex* v. *Post*, R. & R., C. & C., 101

370. If a person is authorised to fill up a bill or note with one sum, it is a forgery to fill it up with a larger sum, or even a less sum, and apply the instrument to purposes different from his instructions

Rex v. *Hart*, Mood., C. C., 486. *The Queen* v. *Bateman*, 1 Cox, C. C., 186. *The Queen* v. *Wilson*, 1 Den., C. C., 284

371. To write one's own name, with the intention that it should pass as the signature of another person of the same name, is forgery

Mead v. *Young*, 4 T. R., 28. *Rex* v. *Parkes*, 2 Leach, C. C., 775

372. A person having obtained genuine signatures, wrote above one a promissory note; and on the other side of the other

a promissory note payable to that person, and so changed the signature into an indorsement; was convicted of forging the note and the indorsement

Rex v. *Hales*, 17 State Tr., 161, 209, 229

373. Using the genuine signature of one person in any way, so as to make it appear that it is the signature of another person of the same name, is forgery

Reg. v. *Blenkinsop*, 1 Den., C. C., 276. *Reg.* v. *Mitchell*, 1 Den., C. C., 282. *Reg.* v. *Rogers*, 8 C. & P., 649. *Reg.* v. *Parke*, 1 Cox., C. C., 4

374. Discounting bills, or drawing drafts with fictitious names on them, is forgery

Dunn's Case, 1 Leach, 57. *Botland's Case*, 1 Leach, 83. *Lockett's Case*, 1 Leach, 94. *Taft's Case*, 1 Leach, 172. *Shephard's Case*, 1 Leach, 226. *Reg.* v. *Wardell*, 3 F. & F., 82

375. Signing a bill or note by procuration for another person fraudulently, and without lawful authority; and uttering such a bill knowing that it is so signed by procuration, without lawful authority, is felony, punishable with penal servitude for not more than fourteen and not less than five years: or imprisonment for not more than two years, and with or without hard labour and solitary confinement

24 & 25 Vict. (1864), c. 98, s. 24

376.* Subject to the provisions of this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery

377.* A debtor who pays a holder who derives his title through forgery is not discharged

In *Robarts* v. *Tucker* (16 Q. B., 575), MAULE, J., said, that in his opinion if a banker is called upon to pay an acceptance of his customer's, bearing several indorsements, he is entitled to reasonable time to inquire into their genuineness, and the title of the presenter

A banker who issues cheques to his customer, payable to order, is not bound to inquire into the genuineness of the payee's indorsement

But any person who obtains the money from the banker by means of a forged indorsement is liable to the true owner of the cheque

Bobbett v. *Pinckett*, Ex. Div., May 5, 1876

378. A person who discounts a forged bill or note may recover the money back

Jones v. *Ryde*, 5 Taunt., 488. *Bruce* v. *Bruce*, 5 Taunt., 495. *Gurney* v. *Womersly*, E. & B., 133. *Wilkinson* v. *Johnson*, 3 B. & C., 428

379. Where bankers paid a forged acceptance of their customer, and did not discover the mistake the same day, they were held not entitled to demand it back

In *Cocks* v. *Masterman*, the Court expressly refrained from giving an opinion as to whether they might have done so if the demand had been made the same day

Smith v. *Mercer*, 6 Taunt., 76. *Cocks* v. *Masterman*, 9 B. & C., 902. *Mather* v. *Lord Maidstone*, C. B., 273

These seem to be the chief points relating to bills and notes, which occur in daily practice, and are most necessary to be known

And now is done the long day's work

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